

ASSEMBLY BILL

No. 1325

Introduced by Assembly Members Cook and Beall
(Principal coauthor: Assembly Member Coto)
(Principal coauthors: Senators Ducheny and Florez)

February 27, 2009

An act to add Section 8600.5 to the Family Code, and to amend Sections 294, 358.1, 361.5, 366.21, 366.22, 366.25, 366.26, 366.3, 16120, 16508, and 16508.1 of, and to add Section 366.24 to, the Welfare and Institutions Code, relating to Indian children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1325, as introduced, Cook. Tribal customary adoption.

(1) Existing law governs the removal of a child who has suffered or is at risk of suffering abuse or neglect from the home of the child's parent or guardian and the placement of that child in foster care. These provisions require the juvenile court to, among other things, conduct noticed detention, periodic status review, and dispositional hearings regarding the child, and direct the court to order, review, and receive into evidence social studies or evaluations regarding the child, including recommendations for placement. Under certain circumstances, the juvenile court may terminate parental rights and place the child for adoption or in long-term foster care, among other options for permanent placement. These provisions require county social workers to conduct the social studies or evaluations and to prepare reports and make recommendations to the court regarding temporary and long-term placement of the child, as specified.

Existing federal law, the Indian Child Welfare Act, and state law govern the placement of children who are or who may be Indian children, as specified

This bill would revise those provisions to require the juvenile court and social workers to consider and recommend tribal customary adoption, as defined, as an additional permanent placement option, without termination of parental rights, for a dependent child. The bill would provide that a tribal customary adoption order would have the same force and effect as an order of adoption. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law governs independent and agency adoptions.

This bill would specifically exempt tribal customary adoptions from those provisions.

(3) The bill would require the Judicial Council to adopt rules of court and necessary forms to implement tribal customary adoption as a permanent plan for Indian children before July 1, 2010.

(4) The amendments implementing tribal customary adoption would become operative on July 1, 2010.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 8600.5 is added to the Family Code, to
- 2 read:
- 3 8600.5. This part does not apply to a tribal customary adoption
- 4 as defined in Section 366.26 of the Welfare and Institutions Code.
- 5 SEC. 2. Section 294 of the Welfare and Institutions Code is
- 6 amended to read:
- 7 294. The social worker or probation officer shall give notice
- 8 of a selection and implementation hearing held pursuant to Section
- 9 366.26 in the following manner:
- 10 (a) Notice of the hearing shall be given to the following persons:

1 (1) The mother.

2 (2) The fathers, presumed and alleged.

3 (3) The child, if the child is 10 years of age or older.

4 (4) Any known sibling of the child who is the subject of the
5 hearing if that sibling either is the subject of a dependency
6 proceeding or has been adjudged to be a dependent child of the
7 juvenile court. If the sibling is 10 years of age or older, the sibling,
8 the sibling's caregiver, and the sibling's attorney. If the sibling is
9 under 10 years of age, the sibling's caregiver and the sibling's
10 attorney. However, notice is not required to be given to any sibling
11 whose matter is calendared in the same court on the same day.

12 (5) The grandparents of the child, if their address is known and
13 if the parent's whereabouts are unknown.

14 (6) All counsel of record.

15 (7) To any unknown parent by publication, if ordered by the
16 court pursuant to paragraph (2) of subdivision (g).

17 (8) The current caregiver of the child, including foster parents,
18 relative caregivers, preadoptive parents, and nonrelative extended
19 family members. Any person notified may attend all hearings and
20 may submit any information he or she deems relevant to the court
21 in writing.

22 (b) The following persons shall not be notified of the hearing:

23 (1) A parent who has relinquished the child to the State
24 Department of Social Services or to a licensed adoption agency
25 for adoption, and the relinquishment has been accepted and filed
26 with notice as required under Section 8700 of the Family Code.

27 (2) An alleged father who has denied paternity and has executed
28 a waiver of the right to notice of further proceedings.

29 (3) A parent whose parental rights have been terminated.

30 (c) (1) Service of the notice shall be completed at least 45 days
31 before the hearing date. Service is deemed complete at the time
32 the notice is personally delivered to the person named in the notice
33 or 10 days after the notice has been placed in the mail, or at the
34 expiration of the time prescribed by the order for publication.

35 (2) Service of notice in cases where publication is ordered shall
36 be completed at least 30 days before the date of the hearing.

37 (d) Regardless of the type of notice required, or the manner in
38 which it is served, once the court has made the initial finding that
39 notice has properly been given to the parent, or to any person
40 entitled to receive notice pursuant to this section, subsequent notice

1 for any continuation of a Section 366.26 hearing may be by
2 first-class mail to any last known address, by an order made
3 pursuant to Section 296, or by any other means that the court
4 determines is reasonably calculated, under any circumstance, to
5 provide notice of the continued hearing. However, if the
6 recommendation changes from the recommendation contained in
7 the notice previously found to be proper, notice shall be provided
8 to the parent, and to any person entitled to receive notice pursuant
9 to this section, regarding that subsequent hearing.

10 (e) The notice shall contain the following information:

- 11 (1) The date, time, and place of the hearing.
- 12 (2) The right to appear.
- 13 (3) The parents' right to counsel.
- 14 (4) The nature of the proceedings.
- 15 (5) The recommendation of the supervising agency.
- 16 (6) A statement that, at the time of hearing, the court is required
17 to select a permanent plan of adoption, legal guardianship, or
18 long-term foster care for the child.

19 (f) Notice to the parents may be given in any one of the
20 following manners:

21 (1) If the parent is present at the hearing at which the court
22 schedules a hearing pursuant to Section 366.26, the court shall
23 advise the parent of the date, time, and place of the proceedings,
24 their right to counsel, the nature of the proceedings, and the
25 requirement that at the proceedings the court shall select and
26 implement a plan of adoption, legal guardianship, or long-term
27 foster care for the child. The court shall direct the parent to appear
28 for the proceedings and then direct that the parent be notified
29 thereafter by first-class mail to the parent's usual place of residence
30 or business only.

31 (2) Certified mail, return receipt requested, to the parent's last
32 known mailing address. This notice shall be sufficient if the child
33 welfare agency receives a return receipt signed by the parent.

34 (3) Personal service to the parent named in the notice.

35 (4) Delivery to a competent person who is at least 18 years of
36 age at the parent's usual place of residence or business, and
37 thereafter mailed to the parent named in the notice by first-class
38 mail at the place where the notice was delivered.

1 (5) If the residence of the parent is outside the state, service
2 may be made as described in paragraph (1), (3), or (4) or by
3 certified mail, return receipt requested.

4 (6) If the recommendation of the probation officer or social
5 worker is legal guardianship or long-term foster care, *or, in the*
6 *case of an Indian child, tribal customary adoption*, service may
7 be made by first-class mail to the parent's usual place of residence
8 or business.

9 (7) If a parent's identity is known but his or her whereabouts
10 are unknown and the parent cannot, with reasonable diligence, be
11 served in any manner specified in paragraphs (1) to (6), inclusive,
12 the petitioner shall file an affidavit with the court at least 75 days
13 before the hearing date, stating the name of the parent and
14 describing the efforts made to locate and serve the parent.

15 (A) If the court determines that there has been due diligence in
16 attempting to locate and serve the parent and the probation officer
17 or social worker recommends adoption, service shall be to that
18 parent's attorney of record, if any, by certified mail, return receipt
19 requested. If the parent does not have an attorney of record, the
20 court shall order that service be made by publication of citation
21 requiring the parent to appear at the date, time, and place stated in
22 the citation, and that the citation be published in a newspaper
23 designated as most likely to give notice to the parent. Publication
24 shall be made once a week for four consecutive weeks. Whether
25 notice is to the attorney of record or by publication, the court shall
26 also order that notice be given to the grandparents of the child, if
27 their identities and addresses are known, by first-class mail.

28 (B) If the court determines that there has been due diligence in
29 attempting to locate and serve the parent and the probation officer
30 or social worker recommends legal guardianship or long-term
31 foster care, no further notice is required to the parent, but the court
32 shall order that notice be given to the grandparents of the child, if
33 their identities and addresses are known, by first-class mail.

34 (C) In any case where the residence of the parent becomes
35 known, notice shall immediately be served upon the parent as
36 provided for in either paragraph (2), (3), (4), (5), or (6).

37 (g) (1) If the identity of one or both of the parents, or alleged
38 parents, of the child is unknown, or if the name of one or both
39 parents is uncertain, then that fact shall be set forth in the affidavit
40 filed with the court at least 75 days before the hearing date and

1 the court, consistent with the provisions of Sections 7665 and 7666
2 of the Family Code, shall issue an order dispensing with notice to
3 a natural parent or possible natural parent under this section if,
4 after inquiry and a determination that there has been due diligence
5 in attempting to identify the unknown parent, the court is unable
6 to identify the natural parent or possible natural parent and no
7 person has appeared claiming to be the natural parent.

8 (2) After a determination that there has been due diligence in
9 attempting to identify an unknown parent pursuant to paragraph
10 (1) and the probation officer or social worker recommends
11 adoption, the court shall consider whether publication notice would
12 be likely to lead to actual notice to the unknown parent. The court
13 may order publication notice if, on the basis of all information
14 before the court, the court determines that notice by publication
15 is likely to lead to actual notice to the parent. If publication notice
16 to an unknown parent is ordered, the court shall order the published
17 citation to be directed to either the father or mother, or both, of
18 the child, and to all persons claiming to be the father or mother of
19 the child, naming and otherwise describing the child. An order of
20 publication pursuant to this paragraph shall be based on an affidavit
21 describing efforts made to identify the unknown parent or parents.
22 Service made by publication pursuant to this paragraph shall
23 require the unknown parent or parents to appear at the date, time,
24 and place stated in the citation. Publication shall be made once a
25 week for four consecutive weeks.

26 (3) If the court determines that there has been due diligence in
27 attempting to identify one or both of the parents, or alleged parents,
28 of the child and the probation officer or social worker recommends
29 legal guardianship or long-term foster care, no further notice to
30 the parent shall be required.

31 (h) Notice to the child and all counsel of record shall be by
32 first-class mail.

33 (i) If the court knows or has reason to know that an Indian child
34 is involved, notice shall be given in accordance with Section 224.2.

35 (j) Notwithstanding subdivision (a), if the attorney of record is
36 present at the time the court schedules a hearing pursuant to Section
37 366.26, no further notice is required, except as required by
38 subparagraph (A) of paragraph (7) of subdivision (f).

39 (k) This section shall also apply to children adjudged wards
40 pursuant to Section 727.31.

1 (l) The court shall state the reasons on the record explaining
2 why good cause exists for granting any continuance of a hearing
3 held pursuant to Section 366.26 to fulfill the requirements of this
4 section.

5 SEC. 3. Section 358.1 of the Welfare and Institutions Code is
6 amended to read:

7 358.1. Each social study or evaluation made by a social worker
8 or child advocate appointed by the court, required to be received
9 in evidence pursuant to Section 358, shall include, but not be
10 limited to, a factual discussion of each of the following subjects:

11 (a) Whether the county welfare department or social worker has
12 considered child protective services, as defined in Chapter 5
13 (commencing with Section 16500) of Part 4 of Division 9, as a
14 possible solution to the problems at hand, and has offered these
15 services to qualified parents if appropriate under the circumstances.

16 (b) What plan, if any, for return of the child to his or her parents
17 and for achieving legal permanence for the child if efforts to reunify
18 fail, is recommended to the court by the county welfare department
19 or probation officer.

20 (c) Whether the best interests of the child will be served by
21 granting reasonable visitation rights with the child to his or her
22 grandparents, in order to maintain and strengthen the child's family
23 relationships.

24 (d) (1) Whether the child has siblings under the court's
25 jurisdiction, and, if any siblings exist, all of the following:

26 (A) The nature of the relationship between the child and his or
27 her siblings.

28 (B) The appropriateness of developing or maintaining the sibling
29 relationships pursuant to Section 16002.

30 (C) If the siblings are not placed together in the same home,
31 why the siblings are not placed together and what efforts are being
32 made to place the siblings together, or why those efforts are not
33 appropriate.

34 (D) If the siblings are not placed together, the frequency and
35 nature of the visits between siblings.

36 (E) The impact of the sibling relationships on the child's
37 placement and planning for legal permanence.

38 (2) The factual discussion shall include a discussion of indicators
39 of the nature of the child's sibling relationships, including, but not
40 limited to, whether the siblings were raised together in the same

1 home, whether the siblings have shared significant common
2 experiences or have existing close and strong bonds, whether either
3 sibling expresses a desire to visit or live with his or her sibling, as
4 applicable, and whether ongoing contact is in the child's best
5 emotional interest.

6 (e) If the parent or guardian is unwilling or unable to participate
7 in making an educational decision for his or her child, or if other
8 circumstances exist that compromise the ability of the parent or
9 guardian to make educational decisions for the child, the county
10 welfare department or social worker shall consider whether the
11 right of the parent or guardian to make educational decisions for
12 the child should be limited. If the study or evaluation makes that
13 recommendation, it shall identify whether there is a responsible
14 adult available to make educational decisions for the child pursuant
15 to Section 361.

16 (f) Whether the child appears to be a person who is eligible to
17 be considered for further court action to free the child from parental
18 custody and control.

19 (g) Whether the parent has been advised of his or her option to
20 participate in adoption planning, including the option to enter into
21 a postadoption contact agreement as described in Section 8714.7
22 of the Family Code, and to voluntarily relinquish the child for
23 adoption if an adoption agency is willing to accept the
24 relinquishment.

25 (h) The appropriateness of any relative placement pursuant to
26 Section 361.3. However, this consideration may not be cause for
27 continuance of the dispositional hearing.

28 (i) Whether the caregiver desires, and is willing, to provide legal
29 permanency for the child if reunification is unsuccessful.

30 (j) *For an Indian child, in consultation with the Indian child's*
31 *tribe, whether tribal customary adoption is an appropriate*
32 *permanent plan for the child if reunification is unsuccessful.*

33 SEC. 4. Section 361.5 of the Welfare and Institutions Code is
34 amended to read:

35 361.5. (a) Except as provided in subdivision (b), or when the
36 parent has voluntarily relinquished the child and the relinquishment
37 has been filed with the State Department of Social Services, or
38 upon the establishment of an order of guardianship pursuant to
39 Section 360, whenever a child is removed from a parent's or
40 guardian's custody, the juvenile court shall order the social worker

1 to provide child welfare services to the child and the child's mother
2 and statutorily presumed father or guardians. Upon a finding and
3 declaration of paternity by the juvenile court or proof of a prior
4 declaration of paternity by any court of competent jurisdiction, the
5 juvenile court may order services for the child and the biological
6 father, if the court determines that the services will benefit the
7 child.

8 (1) Family reunification services, when provided, shall be
9 provided as follows:

10 (A) Except as otherwise provided in subparagraph (C), for a
11 child who, on the date of initial removal from the physical custody
12 of his or her parent or guardian, was three years of age or older,
13 court-ordered services shall be provided during the period of time
14 beginning with the dispositional hearing and ending with the date
15 of the hearing set pursuant to subdivision (f) of Section 366.21,
16 unless the child is returned to the home of the parent or guardian.

17 (B) For a child who, on the date of initial removal from the
18 physical custody of his or her parent or guardian, was under three
19 years of age, court-ordered services shall be provided during the
20 period of time beginning with the dispositional hearing and ending
21 with the date of the hearing set pursuant to subdivision (e) of
22 Section 366.21, unless the child is returned to the home of the
23 parent or guardian.

24 (C) For the purpose of placing and maintaining a sibling group
25 together in a permanent home should reunification efforts fail, for
26 a child in a sibling group whose members were removed from
27 parental custody at the same time, and in which one member of
28 the sibling group was under three years of age on the date of initial
29 removal from the physical custody of his or her parent or guardian,
30 court-ordered services to some or all of the sibling group may be
31 limited to a period of six months from the date the child entered
32 foster care. For the purposes of this paragraph, "a sibling group"
33 shall mean two or more children who are related to each other as
34 full or half siblings.

35 Regardless of the age of the child, a child shall be deemed to
36 have entered foster care on the earlier of the date of the
37 jurisdictional hearing held pursuant to Section 356 or the date that
38 is 60 days after the date on which the child was initially removed
39 from the physical custody of his or her parent or guardian.

1 Any motion to terminate court-ordered reunification services
2 prior to the hearing set pursuant to subdivision (f) of Section 366.21
3 for a child described by paragraph (1), or within six months of the
4 initial dispositional hearing for a child described by paragraph (2)
5 or this paragraph, shall be made pursuant to the requirements set
6 forth in subdivision (c) of Section 388.

7 (2) Notwithstanding subparagraphs (A), (B), and (C) of
8 paragraph (1), court-ordered services may be extended up to a
9 maximum time period not to exceed 18 months after the date the
10 child was originally removed from physical custody of his or her
11 parent or guardian if it can be shown, at the hearing held pursuant
12 to subdivision (f) of Section 366.21, that the permanent plan for
13 the child is that he or she will be returned and safely maintained
14 in the home within the extended time period. The court shall extend
15 the time period only if it finds that there is a substantial probability
16 that the child will be returned to the physical custody of his or her
17 parent or guardian within the extended time period or that
18 reasonable services have not been provided to the parent or
19 guardian. In determining whether court-ordered services may be
20 extended, the court shall consider the special circumstances of an
21 incarcerated or institutionalized parent or parents, or parent or
22 parents court-ordered to a residential substance abuse treatment
23 program, including, but not limited to, barriers to the parent's or
24 guardian's access to services and ability to maintain contact with
25 his or her child. The court shall also consider, among other factors,
26 good faith efforts that the parent or guardian has made to maintain
27 contact with the child. If the court extends the time period, the
28 court shall specify the factual basis for its conclusion that there is
29 a substantial probability that the child will be returned to the
30 physical custody of his or her parent or guardian within the
31 extended time period. The court also shall make findings pursuant
32 to subdivision (a) of Section 366 and subdivision (e) of Section
33 358.1.

34 When counseling or other treatment services are ordered, the
35 parent or guardian shall be ordered to participate in those services,
36 unless the parent's or guardian's participation is deemed by the
37 court to be inappropriate or potentially detrimental to the child, or
38 unless a parent or guardian is incarcerated and the corrections
39 facility in which he or she is incarcerated does not provide access
40 to the treatment services ordered by the court. Physical custody of

1 the child by the parents or guardians during the applicable time
2 period under subparagraph (A), (B), or (C) of paragraph (1) shall
3 not serve to interrupt the running of the period. If at the end of the
4 applicable time period, a child cannot be safely returned to the
5 care and custody of a parent or guardian without court supervision,
6 but the child clearly desires contact with the parent or guardian,
7 the court shall take the child's desire into account in devising a
8 permanency plan.

9 In cases where the child was under three years of age on the date
10 of the initial removal from the physical custody of his or her parent
11 or guardian or is a member of a sibling group as described in
12 subparagraph (C) of paragraph (1), the court shall inform the parent
13 or guardian that the failure of the parent or guardian to participate
14 regularly in any court-ordered treatment programs or to cooperate
15 or avail himself or herself of services provided as part of the child
16 welfare services case plan may result in a termination of efforts
17 to reunify the family after six months. The court shall inform the
18 parent or guardian of the factors used in subdivision (e) of Section
19 366.21 to determine whether to limit services to six months for
20 some or all members of a sibling group as described in
21 subparagraph (C) of paragraph (1).

22 (3) Notwithstanding paragraph (2), court-ordered services may
23 be extended up to a maximum time period not to exceed 24 months
24 after the date the child was originally removed from physical
25 custody of his or her parent or guardian if it is shown, at the hearing
26 held pursuant to subdivision (b) of Section 366.22, that the
27 permanent plan for the child is that he or she will be returned and
28 safely maintained in the home within the extended time period.
29 The court shall extend the time period only if it finds that it is in
30 the child's best interest to have the time period extended and that
31 there is a substantial probability that the child will be returned to
32 the physical custody of his or her parent or guardian who is
33 described in subdivision (b) of Section 366.22 within the extended
34 time period, or that reasonable services have not been provided to
35 the parent or guardian. If the court extends the time period, the
36 court shall specify the factual basis for its conclusion that there is
37 a substantial probability that the child will be returned to the
38 physical custody of his or her parent or guardian within the
39 extended time period. The court also shall make findings pursuant

1 to subdivision (a) of Section 366 and subdivision (e) of Section
2 358.1.

3 When counseling or other treatment services are ordered, the
4 parent or guardian shall be ordered to participate in those services,
5 in order for substantial probability to be found. Physical custody
6 of the child by the parents or guardians during the applicable time
7 period under subparagraph (A), (B), or (C) of paragraph (1) shall
8 not serve to interrupt the running of the period. If at the end of the
9 applicable time period, the child cannot be safely returned to the
10 care and custody of a parent or guardian without court supervision,
11 but the child clearly desires contact with the parent or guardian,
12 the court shall take the child's desire into account in devising a
13 permanency plan.

14 Except in cases where, pursuant to subdivision (b), the court
15 does not order reunification services, the court shall inform the
16 parent or parents of Section 366.26 and shall specify that the
17 parent's or parents' parental rights may be terminated.

18 (b) Reunification services need not be provided to a parent or
19 guardian described in this subdivision when the court finds, by
20 clear and convincing evidence, any of the following:

21 (1) That the whereabouts of the parent or guardian is unknown.
22 A finding pursuant to this paragraph shall be supported by an
23 affidavit or by proof that a reasonably diligent search has failed
24 to locate the parent or guardian. The posting or publication of
25 notices is not required in that search.

26 (2) That the parent or guardian is suffering from a mental
27 disability that is described in Chapter 2 (commencing with Section
28 7820) of Part 4 of Division 12 of the Family Code and that renders
29 him or her incapable of utilizing those services.

30 (3) That the child or a sibling of the child has been previously
31 adjudicated a dependent pursuant to any subdivision of Section
32 300 as a result of physical or sexual abuse, that following that
33 adjudication the child had been removed from the custody of his
34 or her parent or guardian pursuant to Section 361, that the child
35 has been returned to the custody of the parent or guardian from
36 whom the child had been taken originally, and that the child is
37 being removed pursuant to Section 361, due to additional physical
38 or sexual abuse.

39 (4) That the parent or guardian of the child has caused the death
40 of another child through abuse or neglect.

1 (5) That the child was brought within the jurisdiction of the
2 court under subdivision (e) of Section 300 because of the conduct
3 of that parent or guardian.

4 (6) That the child has been adjudicated a dependent pursuant
5 to any subdivision of Section 300 as a result of severe sexual abuse
6 or the infliction of severe physical harm to the child, a sibling, or
7 a half sibling by a parent or guardian, as defined in this subdivision,
8 and the court makes a factual finding that it would not benefit the
9 child to pursue reunification services with the offending parent or
10 guardian.

11 A finding of severe sexual abuse, for the purposes of this
12 subdivision, may be based on, but is not limited to, sexual
13 intercourse, or stimulation involving genital-genital, oral-genital,
14 anal-genital, or oral-anal contact, whether between the parent or
15 guardian and the child or a sibling or half sibling of the child, or
16 between the child or a sibling or half sibling of the child and
17 another person or animal with the actual or implied consent of the
18 parent or guardian; or the penetration or manipulation of the
19 child's, sibling's, or half sibling's genital organs or rectum by any
20 animate or inanimate object for the sexual gratification of the
21 parent or guardian, or for the sexual gratification of another person
22 with the actual or implied consent of the parent or guardian.

23 A finding of the infliction of severe physical harm, for the
24 purposes of this subdivision, may be based on, but is not limited
25 to, deliberate and serious injury inflicted to or on a child's body
26 or the body of a sibling or half sibling of the child by an act or
27 omission of the parent or guardian, or of another individual or
28 animal with the consent of the parent or guardian; deliberate and
29 torturous confinement of the child, sibling, or half sibling in a
30 closed space; or any other torturous act or omission that would be
31 reasonably understood to cause serious emotional damage.

32 (7) That the parent is not receiving reunification services for a
33 sibling or a half sibling of the child pursuant to paragraph (3), (5),
34 or (6).

35 (8) That the child was conceived by means of the commission
36 of an offense listed in Section 288 or 288.5 of the Penal Code, or
37 by an act committed outside of this state that, if committed in this
38 state, would constitute one of those offenses. This paragraph only
39 applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, “serious danger” means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, “willful abandonment” shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least

1 two prior occasions, even though the programs identified were
2 available and accessible.

3 (14) That the parent or guardian of the child has advised the
4 court that he or she is not interested in receiving family
5 maintenance or family reunification services or having the child
6 returned to or placed in his or her custody and does not wish to
7 receive family maintenance or reunification services.

8 The parent or guardian shall be represented by counsel and shall
9 execute a waiver of services form to be adopted by the Judicial
10 Council. The court shall advise the parent or guardian of any right
11 to services and of the possible consequences of a waiver of
12 services, including the termination of parental rights and placement
13 of the child for adoption. The court shall not accept the waiver of
14 services unless it states on the record its finding that the parent or
15 guardian has knowingly and intelligently waived the right to
16 services.

17 (15) That the parent or guardian has on one or more occasions
18 willfully abducted the child or child's sibling or half sibling from
19 his or her placement and refused to disclose the child's or child's
20 sibling's or half sibling's whereabouts, refused to return physical
21 custody of the child or child's sibling or half sibling to his or her
22 placement, or refused to return physical custody of the child or
23 child's sibling or half sibling to the social worker.

24 (c) In deciding whether to order reunification in any case in
25 which this section applies, the court shall hold a dispositional
26 hearing. The social worker shall prepare a report that discusses
27 whether reunification services shall be provided. When it is alleged,
28 pursuant to paragraph (2) of subdivision (b), that the parent is
29 incapable of utilizing services due to mental disability, the court
30 shall order reunification services unless competent evidence from
31 mental health professionals establishes that, even with the provision
32 of services, the parent is unlikely to be capable of adequately caring
33 for the child within the time limits specified in subdivision (a).

34 The court shall not order reunification for a parent or guardian
35 described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),
36 (13), (14), or (15) of subdivision (b) unless the court finds, by clear
37 and convincing evidence, that reunification is in the best interest
38 of the child.

39 In addition, the court shall not order reunification in any situation
40 described in paragraph (5) of subdivision (b) unless it finds that,

1 based on competent testimony, those services are likely to prevent
2 reabuse or continued neglect of the child or that failure to try
3 reunification will be detrimental to the child because the child is
4 closely and positively attached to that parent. The social worker
5 shall investigate the circumstances leading to the removal of the
6 child and advise the court whether there are circumstances that
7 indicate that reunification is likely to be successful or unsuccessful
8 and whether failure to order reunification is likely to be detrimental
9 to the child.

10 The failure of the parent to respond to previous services, the fact
11 that the child was abused while the parent was under the influence
12 of drugs or alcohol, a past history of violent behavior, or testimony
13 by a competent professional that the parent's behavior is unlikely
14 to be changed by services are among the factors indicating that
15 reunification services are unlikely to be successful. The fact that
16 a parent or guardian is no longer living with an individual who
17 severely abused the child may be considered in deciding that
18 reunification services are likely to be successful, provided that the
19 court shall consider any pattern of behavior on the part of the parent
20 that has exposed the child to repeated abuse.

21 (d) If reunification services are not ordered pursuant to
22 paragraph (1) of subdivision (b) and the whereabouts of a parent
23 become known within six months of the out-of-home placement
24 of the child, the court shall order the social worker to provide
25 family reunification services in accordance with this subdivision.

26 (e) (1) If the parent or guardian is incarcerated or
27 institutionalized, the court shall order reasonable services unless
28 the court determines, by clear and convincing evidence, those
29 services would be detrimental to the child. In determining
30 detriment, the court shall consider the age of the child, the degree
31 of parent-child bonding, the length of the sentence, the length and
32 nature of the treatment, the nature of the crime or illness, the degree
33 of detriment to the child if services are not offered and, for children
34 10 years of age or older, the child's attitude toward the
35 implementation of family reunification services, the likelihood of
36 the parent's discharge from incarceration or institutionalization
37 within the reunification time limitations described in subdivision
38 (a), and any other appropriate factors. In determining the content
39 of reasonable services, the court shall consider the particular
40 barriers to an incarcerated or otherwise institutionalized parent's

1 access to those court-mandated services and ability to maintain
2 contact with his or her child, and shall document this information
3 in the child's case plan. Reunification services are subject to the
4 applicable time limitations imposed in subdivision (a). Services
5 may include, but shall not be limited to, all of the following:

6 (A) Maintaining contact between the parent and child through
7 collect telephone calls.

8 (B) Transportation services, where appropriate.

9 (C) Visitation services, where appropriate.

10 (D) Reasonable services to extended family members or foster
11 parents providing care for the child if the services are not
12 detrimental to the child.

13 An incarcerated parent may be required to attend counseling,
14 parenting classes, or vocational training programs as part of the
15 reunification service plan if actual access to these services is
16 provided. The social worker shall document in the child's case
17 plan the particular barriers to an incarcerated or institutionalized
18 parent's access to those court-mandated services and ability to
19 maintain contact with his or her child.

20 (2) The presiding judge of the juvenile court of each county
21 may convene representatives of the county welfare department,
22 the sheriff's department, and other appropriate entities for the
23 purpose of developing and entering into protocols for ensuring the
24 notification, transportation, and presence of an incarcerated or
25 institutionalized parent at all court hearings involving proceedings
26 affecting the child pursuant to Section 2625 of the Penal Code.
27 The county welfare department shall utilize the prisoner locator
28 system developed by the Department of Corrections and
29 Rehabilitation to facilitate timely and effective notice of hearings
30 for incarcerated parents.

31 (3) Notwithstanding any other provision of law, if the
32 incarcerated parent is a woman seeking to participate in the
33 community treatment program operated by the Department of
34 Corrections and Rehabilitation pursuant to Chapter 4.8
35 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
36 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal
37 Code, the court shall determine whether the parent's participation
38 in a program is in the child's best interest and whether it is suitable
39 to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care, *or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption*, is the most appropriate plan for the child, and shall consider in-state and out-of-state placement options. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) (1) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, *including when, in consultation with the child's tribe, tribal customary adoption is recommended*, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(A) Current search efforts for an absent parent or parents.

(B) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, *including a prospective tribal customary adoptive parent*, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the

1 legal and financial rights and responsibilities of adoption and
2 guardianship. If a proposed guardian is a relative of the minor, and
3 the relative was assessed for foster care placement of the minor
4 prior to January 1, 1998, the assessment shall also consider, but
5 need not be limited to, all of the factors specified in subdivision
6 (a) of Section 361.3. As used in this subparagraph, “relative” means
7 an adult who is related to the minor by blood, adoption, or affinity
8 within the fifth degree of kinship, including stepparents,
9 stepsiblings, and all relatives whose status is preceded by the words
10 “great,” “great-great,” or “grand,” or the spouse of any of those
11 persons even if the marriage was terminated by death or
12 dissolution.

13 (E) The relationship of the child to any identified prospective
14 adoptive parent or guardian, *including a prospective tribal*
15 *customary adoptive parent*, the duration and character of the
16 relationship, the motivation for seeking adoption or guardianship,
17 and a statement from the child concerning placement and the
18 adoption or guardianship, unless the child’s age or physical,
19 emotional, or other condition precludes his or her meaningful
20 response, and if so, a description of the condition.

21 (F) An analysis of the likelihood that the child will be adopted
22 if parental rights are terminated.

23 (G) *In the case of an Indian child, in addition to subparagraphs*
24 *(A) to (F), inclusive, an assessment of the likelihood that the child*
25 *will be adopted, when, in consultation with the child’s tribe, a*
26 *customary tribal adoption, as defined in Section 366.24, is*
27 *recommended. If tribal customary adoption is recommended, the*
28 *assessment shall include an analysis of both of the following:*

29 (i) *Whether tribal customary adoption would or would not be*
30 *detrimental to the Indian child and the reasons for reaching that*
31 *conclusion.*

32 (ii) *Whether the Indian child cannot or should not be returned*
33 *to the home of the Indian parent or Indian custodian and the*
34 *reasons for reaching that conclusion.*

35 (2) (A) A relative caregiver’s preference for legal guardianship
36 over adoption, if it is due to circumstances that do not include an
37 unwillingness to accept legal or financial responsibility for the
38 child, shall not constitute the sole basis for recommending removal
39 of the child from the relative caregiver for purposes of adoptive
40 placement.

1 (B) A relative caregiver shall be given information regarding
2 the permanency options of guardianship and adoption, including
3 the long-term benefits and consequences of each option, prior to
4 establishing legal guardianship or pursuing adoption.

5 (h) In determining whether reunification services will benefit
6 the child pursuant to paragraph (6) or (7) of subdivision (b), the
7 court shall consider any information it deems relevant, including
8 the following factors:

9 (1) The specific act or omission comprising the severe sexual
10 abuse or the severe physical harm inflicted on the child or the
11 child's sibling or half sibling.

12 (2) The circumstances under which the abuse or harm was
13 inflicted on the child or the child's sibling or half sibling.

14 (3) The severity of the emotional trauma suffered by the child
15 or the child's sibling or half sibling.

16 (4) Any history of abuse of other children by the offending
17 parent or guardian.

18 (5) The likelihood that the child may be safely returned to the
19 care of the offending parent or guardian within 12 months with no
20 continuing supervision.

21 (6) Whether or not the child desires to be reunified with the
22 offending parent or guardian.

23 (i) The court shall read into the record the basis for a finding of
24 severe sexual abuse or the infliction of severe physical harm under
25 paragraph (6) of subdivision (b), and shall also specify the factual
26 findings used to determine that the provision of reunification
27 services to the offending parent or guardian would not benefit the
28 child.

29 SEC. 5. Section 366.21 of the Welfare and Institutions Code
30 is amended to read:

31 366.21. (a) Every hearing conducted by the juvenile court
32 reviewing the status of a dependent child shall be placed on the
33 appearance calendar. The court shall advise all persons present at
34 the hearing of the date of the future hearing and of their right to
35 be present and represented by counsel.

36 (b) Except as provided in Sections 294 and 295, notice of the
37 hearing shall be provided pursuant to Section 293.

38 (c) At least 10 calendar days prior to the hearing, the social
39 worker shall file a supplemental report with the court regarding
40 the services provided or offered to the parent or legal guardian to

1 enable him or her to assume custody and the efforts made to
2 achieve legal permanence for the child if efforts to reunify fail,
3 including, but not limited to, efforts to maintain relationships
4 between a child who is 10 years of age or older and has been in
5 out-of-home placement for six months or longer and individuals
6 who are important to the child, consistent with the child's best
7 interests; the progress made; and, where relevant, the prognosis
8 for return of the child to the physical custody of his or her parent
9 or legal guardian; and shall make his or her recommendation for
10 disposition. If the child is a member of a sibling group described
11 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
12 361.5, the report and recommendation may also take into account
13 those factors described in subdivision (e) relating to the child's
14 sibling group. If the recommendation is not to return the child to
15 a parent or legal guardian, the report shall specify why the return
16 of the child would be detrimental to the child. The social worker
17 shall provide the parent or legal guardian, counsel for the child,
18 and any court-appointed child advocate with a copy of the report,
19 including his or her recommendation for disposition, at least 10
20 calendar days prior to the hearing. In the case of a child removed
21 from the physical custody of his or her parent or legal guardian,
22 the social worker shall, at least 10 calendar days prior to the
23 hearing, provide a summary of his or her recommendation for
24 disposition to any foster parents, relative caregivers, and certified
25 foster parents who have been approved for adoption by the State
26 Department of Social Services when it is acting as an adoption
27 agency in counties that are not served by a county adoption agency
28 or by a licensed county adoption agency, community care facility,
29 or foster family agency having the physical custody of the child.
30 The social worker shall include a copy of the Judicial Council
31 Caregiver Information Form (JV-290) with the summary of
32 recommendations to the child's foster parents, relative caregivers,
33 or foster parents approved for adoption, in the caregiver's primary
34 language when available, along with information on how to file
35 the form with the court.

36 (d) Prior to any hearing involving a child in the physical custody
37 of a community care facility or a foster family agency that may
38 result in the return of the child to the physical custody of his or
39 her parent or legal guardian, ~~or~~ in adoption or the creation of a
40 legal guardianship, *or, in the case of an Indian child, in*

1 *consultation with the child's tribe, tribal customary adoption*, the
2 facility or agency shall file with the court a report, or a Judicial
3 Council Caregiver Information Form (JV-290), containing its
4 recommendation for disposition. Prior to the hearing involving a
5 child in the physical custody of a foster parent, a relative caregiver,
6 or a certified foster parent who has been approved for adoption by
7 the State Department of Social Services when it is acting as an
8 adoption agency or by a licensed adoption agency, the foster parent,
9 relative caregiver, or the certified foster parent who has been
10 approved for adoption by the State Department of Social Services
11 when it is acting as an adoption agency in counties that are not
12 served by a county adoption agency or by a licensed county
13 adoption agency, may file with the court a report containing his
14 or her recommendation for disposition. The court shall consider
15 the report and recommendation filed pursuant to this subdivision
16 prior to determining any disposition.

17 (e) At the review hearing held six months after the initial
18 dispositional hearing, the court shall order the return of the child
19 to the physical custody of his or her parent or legal guardian unless
20 the court finds, by a preponderance of the evidence, that the return
21 of the child to his or her parent or legal guardian would create a
22 substantial risk of detriment to the safety, protection, or physical
23 or emotional well-being of the child. The social worker shall have
24 the burden of establishing that detriment. At the hearing, the court
25 shall consider the criminal history, obtained pursuant to paragraph
26 (1) of subdivision (f) of Section 16504.5, of the parent or legal
27 guardian subsequent to the child's removal to the extent that the
28 criminal record is substantially related to the welfare of the child
29 or the parent's or guardian's ability to exercise custody and control
30 regarding his or her child, provided the parent or legal guardian
31 agreed to submit fingerprint images to obtain criminal history
32 information as part of the case plan. The failure of the parent or
33 legal guardian to participate regularly and make substantive
34 progress in court-ordered treatment programs shall be prima facie
35 evidence that return would be detrimental. In making its
36 determination, the court shall review and consider the social
37 worker's report and recommendations and the report and
38 recommendations of any child advocate appointed pursuant to
39 Section 356.5; and shall consider the efforts or progress, or both,
40 demonstrated by the parent or legal guardian and the extent to

1 which he or she availed himself or herself to services provided,
2 taking into account the particular barriers to an incarcerated or
3 institutionalized parent or legal guardian's access to those
4 court-mandated services and ability to maintain contact with his
5 or her child.

6 Regardless of whether the child is returned to a parent or legal
7 guardian, the court shall specify the factual basis for its conclusion
8 that the return would be detrimental or would not be detrimental.
9 The court also shall make appropriate findings pursuant to
10 subdivision (a) of Section 366; and, where relevant, shall order
11 any additional services reasonably believed to facilitate the return
12 of the child to the custody of his or her parent or legal guardian.
13 The court shall also inform the parent or legal guardian that if the
14 child cannot be returned home by the 12-month permanency
15 hearing, a proceeding pursuant to Section 366.26 may be instituted.
16 This section does not apply in a case where, pursuant to Section
17 361.5, the court has ordered that reunification services shall not
18 be provided.

19 If the child was under three years of age on the date of the initial
20 removal, or is a member of a sibling group described in
21 subparagraph (C) of paragraph (1) of subdivision (a) of Section
22 361.5, and the court finds by clear and convincing evidence that
23 the parent failed to participate regularly and make substantive
24 progress in a court-ordered treatment plan, the court may schedule
25 a hearing pursuant to Section 366.26 within 120 days. If, however,
26 the court finds there is a substantial probability that the child, who
27 was under three years of age on the date of initial removal or is a
28 member of a sibling group described in subparagraph (C) of
29 paragraph (1) of subdivision (a) of Section 361.5, may be returned
30 to his or her parent or legal guardian within six months or that
31 reasonable services have not been provided, the court shall continue
32 the case to the 12-month permanency hearing.

33 For the purpose of placing and maintaining a sibling group
34 together in a permanent home, the court, in making its
35 determination to schedule a hearing pursuant to Section 366.26
36 for some or all members of a sibling group, as described in
37 subparagraph (C) of paragraph (1) of subdivision (a) of Section
38 361.5, shall review and consider the social worker's report and
39 recommendations. Factors the report shall address, and the court
40 shall consider, may include, but need not be limited to, whether

1 the sibling group was removed from parental care as a group, the
2 closeness and strength of the sibling bond, the ages of the siblings,
3 the appropriateness of maintaining the sibling group together, the
4 detriment to the child if sibling ties are not maintained, the
5 likelihood of finding a permanent home for the sibling group,
6 whether the sibling group is currently placed together in a
7 preadoptive home or has a concurrent plan goal of legal
8 permanency in the same home, the wishes of each child whose
9 age and physical and emotional condition permits a meaningful
10 response, and the best interest of each child in the sibling group.
11 The court shall specify the factual basis for its finding that it is in
12 the best interest of each child to schedule a hearing pursuant to
13 Section 366.26 in 120 days for some or all of the members of the
14 sibling group.

15 If the child was removed initially under subdivision (g) of
16 Section 300 and the court finds by clear and convincing evidence
17 that the whereabouts of the parent are still unknown, or the parent
18 has failed to contact and visit the child, the court may schedule a
19 hearing pursuant to Section 366.26 within 120 days. The court
20 shall take into account any particular barriers to a parent's ability
21 to maintain contact with his or her child due to the parent's
22 incarceration or institutionalization. If the court finds by clear and
23 convincing evidence that the parent has been convicted of a felony
24 indicating parental unfitness, the court may schedule a hearing
25 pursuant to Section 366.26 within 120 days.

26 If the child had been placed under court supervision with a
27 previously noncustodial parent pursuant to Section 361.2, the court
28 shall determine whether supervision is still necessary. The court
29 may terminate supervision and transfer permanent custody to that
30 parent, as provided for by paragraph (1) of subdivision (b) of
31 Section 361.2.

32 In all other cases, the court shall direct that any reunification
33 services previously ordered shall continue to be offered to the
34 parent or legal guardian pursuant to the time periods set forth in
35 subdivision (a) of Section 361.5, provided that the court may
36 modify the terms and conditions of those services.

37 If the child is not returned to his or her parent or legal guardian,
38 the court shall determine whether reasonable services that were
39 designed to aid the parent or legal guardian in overcoming the
40 problems that led to the initial removal and the continued custody

1 of the child have been provided or offered to the parent or legal
2 guardian. The court shall order that those services be initiated,
3 continued, or terminated.

4 (f) The permanency hearing shall be held no later than 12
5 months after the date the child entered foster care, as that date is
6 determined pursuant to subdivision (a) of Section 361.5. At the
7 permanency hearing, the court shall determine the permanent plan
8 for the child, which shall include a determination of whether the
9 child will be returned to the child's home and, if so, when, within
10 the time limits of subdivision (a) of Section 361.5. The court shall
11 order the return of the child to the physical custody of his or her
12 parent or legal guardian unless the court finds, by a preponderance
13 of the evidence, that the return of the child to his or her parent or
14 legal guardian would create a substantial risk of detriment to the
15 safety, protection, or physical or emotional well-being of the child.
16 The social worker shall have the burden of establishing that
17 detriment. At the permanency hearing, the court shall consider the
18 criminal history, obtained pursuant to paragraph (1) of subdivision
19 (f) of Section 16504.5, of the parent or legal guardian subsequent
20 to the child's removal to the extent that the criminal record is
21 substantially related to the welfare of the child or the parent or
22 legal guardian's ability to exercise custody and control regarding
23 his or her child, provided that the parent or legal guardian agreed
24 to submit fingerprint images to obtain criminal history information
25 as part of the case plan. The court shall also determine whether
26 reasonable services that were designed to aid the parent or legal
27 guardian to overcome the problems that led to the initial removal
28 and continued custody of the child have been provided or offered
29 to the parent or legal guardian. For each youth 16 years of age and
30 older, the court shall also determine whether services have been
31 made available to assist him or her in making the transition from
32 foster care to independent living. The failure of the parent or legal
33 guardian to participate regularly and make substantive progress in
34 court-ordered treatment programs shall be prima facie evidence
35 that return would be detrimental. In making its determination, the
36 court shall review and consider the social worker's report and
37 recommendations and the report and recommendations of any child
38 advocate appointed pursuant to Section 356.5, shall consider the
39 efforts or progress, or both, demonstrated by the parent or legal
40 guardian and the extent to which he or she availed himself or

1 herself of services provided, taking into account the particular
2 barriers to an incarcerated or institutionalized parent or legal
3 guardian's access to those court-mandated services and ability to
4 maintain contact with his or her child and shall make appropriate
5 findings pursuant to subdivision (a) of Section 366.

6 Regardless of whether the child is returned to his or her parent
7 or legal guardian, the court shall specify the factual basis for its
8 decision. If the child is not returned to a parent or legal guardian,
9 the court shall specify the factual basis for its conclusion that the
10 return would be detrimental. The court also shall make a finding
11 pursuant to subdivision (a) of Section 366. If the child is not
12 returned to his or her parent or legal guardian, the court shall
13 consider, and state for the record, in-state and out-of-state
14 placement options. If the child is placed out of the state, the court
15 shall make a determination whether the out-of-state placement
16 continues to be appropriate and in the best interests of the child.

17 (g) If the time period in which the court-ordered services were
18 provided has met or exceeded the time period set forth in
19 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
20 of Section 361.5, as appropriate, and a child is not returned to the
21 custody of a parent or legal guardian at the permanency hearing
22 held pursuant to subdivision (f), the court shall do one of the
23 following:

24 (1) Continue the case for up to six months for a permanency
25 review hearing, provided that the hearing shall occur within 18
26 months of the date the child was originally taken from the physical
27 custody of his or her parent or legal guardian. The court shall
28 continue the case only if it finds that there is a substantial
29 probability that the child will be returned to the physical custody
30 of his or her parent or legal guardian and safely maintained in the
31 home within the extended period of time or that reasonable services
32 have not been provided to the parent or legal guardian. For the
33 purposes of this section, in order to find a substantial probability
34 that the child will be returned to the physical custody of his or her
35 parent or legal guardian and safely maintained in the home within
36 the extended period of time, the court shall be required to find all
37 of the following:

38 (A) That the parent or legal guardian has consistently and
39 regularly contacted and visited with the child.

1 (B) That the parent or legal guardian has made significant
2 progress in resolving problems that led to the child's removal from
3 the home.

4 (C) The parent or legal guardian has demonstrated the capacity
5 and ability both to complete the objectives of his or her treatment
6 plan and to provide for the child's safety, protection, physical and
7 emotional well-being, and special needs.

8 For purposes of this subdivision, the court's decision to continue
9 the case based on a finding or substantial probability that the child
10 will be returned to the physical custody of his or her parent or legal
11 guardian is a compelling reason for determining that a hearing
12 held pursuant to Section 366.26 is not in the best interests of the
13 child.

14 The court shall inform the parent or legal guardian that if the
15 child cannot be returned home by the next permanency review
16 hearing, a proceeding pursuant to Section 366.26 may be instituted.
17 The court may not order that a hearing pursuant to Section 366.26
18 be held unless there is clear and convincing evidence that
19 reasonable services have been provided or offered to the parent or
20 legal guardian.

21 (2) Order that a hearing be held within 120 days, pursuant to
22 Section 366.26, but only if the court does not continue the case to
23 the permanency planning review hearing and there is clear and
24 convincing evidence that reasonable services have been provided
25 or offered to the parents or legal guardians.

26 (3) Order that the child remain in long-term foster care, but only
27 if the court finds by clear and convincing evidence, based upon
28 the evidence already presented to it, including a recommendation
29 by the State Department of Social Services when it is acting as an
30 adoption agency in counties that are not served by a county
31 adoption agency or by a licensed county adoption agency, that
32 there is a compelling reason for determining that a hearing held
33 pursuant to Section 366.26 is not in the best interest of the child
34 because the child is not a proper subject for adoption and has no
35 one willing to accept legal guardianship. For purposes of this
36 section, a recommendation by the State Department of Social
37 Services when it is acting as an adoption agency in counties that
38 are not served by a county adoption agency or by a licensed county
39 adoption agency that adoption is not in the best interest of the child
40 shall constitute a compelling reason for the court's determination.

1 That recommendation shall be based on the present circumstances
2 of the child and may not preclude a different recommendation at
3 a later date if the child's circumstances change.

4 If the court orders that a child who is 10 years of age or older
5 remain in long-term foster care, the court shall determine whether
6 the agency has made reasonable efforts to maintain the child's
7 relationships with individuals other than the child's siblings who
8 are important to the child, consistent with the child's best interests,
9 and may make any appropriate order to ensure that those
10 relationships are maintained.

11 If the child is not returned to his or her parent or legal guardian,
12 the court shall consider, and state for the record, in-state and
13 out-of-state options for permanent placement. If the child is placed
14 out of the state, the court shall make a determination whether the
15 out-of-state placement continues to be appropriate and in the best
16 interests of the child.

17 (h) In any case in which the court orders that a hearing pursuant
18 to Section 366.26 shall be held, it shall also order the termination
19 of reunification services to the parent or legal guardian. The court
20 shall continue to permit the parent or legal guardian to visit the
21 child pending the hearing unless it finds that visitation would be
22 detrimental to the child. The court shall make any other appropriate
23 orders to enable the child to maintain relationships with individuals,
24 other than the child's siblings, who are important to the child,
25 consistent with the child's best interests.

26 (i) (1) Whenever a court orders that a hearing pursuant to
27 Section 366.26, *including when, in consultation with the child's*
28 *tribe, tribal customary adoption is recommended*, shall be held, it
29 shall direct the agency supervising the child and the licensed county
30 adoption agency, or the State Department of Social Services when
31 it is acting as an adoption agency in counties that are not served
32 by a county adoption agency, to prepare an assessment that shall
33 include:

34 (A) Current search efforts for an absent parent or parents or
35 legal guardians.

36 (B) A review of the amount of and nature of any contact between
37 the child and his or her parents or legal guardians and other
38 members of his or her extended family since the time of placement.
39 Although the extended family of each child shall be reviewed on
40 a case-by-case basis, "extended family" for the purpose of this

1 subparagraph shall include, but not be limited to, the child's
2 siblings, grandparents, aunts, and uncles.

3 (C) An evaluation of the child's medical, developmental,
4 scholastic, mental, and emotional status.

5 (D) A preliminary assessment of the eligibility and commitment
6 of any identified prospective adoptive parent or legal guardian,
7 *including the prospective tribal customary adoptive parent*,
8 particularly the caretaker, to include a social history including
9 screening for criminal records and prior referrals for child abuse
10 or neglect, the capability to meet the child's needs, and the
11 understanding of the legal and financial rights and responsibilities
12 of adoption and guardianship. If a proposed guardian is a relative
13 of the minor, and the relative was assessed for foster care placement
14 of the minor prior to January 1, 1998, the assessment shall also
15 consider, but need not be limited to, all of the factors specified in
16 subdivision (a) of Section 361.3.

17 (E) The relationship of the child to any identified prospective
18 adoptive parent or legal guardian, the duration and character of
19 the relationship, the motivation for seeking adoption or
20 guardianship, and a statement from the child concerning placement
21 and the adoption or guardianship, unless the child's age or physical,
22 emotional, or other condition precludes his or her meaningful
23 response, and if so, a description of the condition.

24 (F) A description of efforts to be made to identify a prospective
25 adoptive parent or legal guardian, including, but not limited to,
26 child-specific recruitment and listing on an adoption exchange
27 within the state or out of the state.

28 (G) An analysis of the likelihood that the child will be adopted
29 if parental rights are terminated.

30 (H) *In the case of an Indian child, in addition to subparagraphs*
31 *(A) to (G), inclusive, an assessment of the likelihood that the child*
32 *will be adopted, when, in consultation with the child's tribe, a*
33 *customary tribal adoption, as defined in Section 366.24, is*
34 *recommended. If tribal customary adoption is recommended, the*
35 *assessment shall include an analysis of both of the following:*

36 (i) *Whether tribal customary adoption would or would not be*
37 *detrimental to the Indian child and the reasons for reaching that*
38 *conclusion.*

1 (ii) *Whether the Indian child cannot or should not be returned*
2 *to the home of the Indian parent or Indian custodian and the*
3 *reasons for reaching that conclusion.*

4 (2) (A) A relative caregiver's preference for legal guardianship
5 over adoption, if it is due to circumstances that do not include an
6 unwillingness to accept legal or financial responsibility for the
7 child, shall not constitute the sole basis for recommending removal
8 of the child from the relative caregiver for purposes of adoptive
9 placement.

10 (B) A relative caregiver shall be given information regarding
11 the permanency options of guardianship and adoption, including
12 the long-term benefits and consequences of each option, prior to
13 establishing legal guardianship or pursuing adoption.

14 (j) If, at any hearing held pursuant to Section 366.26, a
15 guardianship is established for the minor with a relative, and
16 juvenile court dependency is subsequently dismissed, the relative
17 shall be eligible for aid under the Kin-GAP Program, as provided
18 for in Article 4.5 (commencing with Section 11360) of Chapter 2
19 of Part 3 of Division 9.

20 (k) As used in this section, "relative" means an adult who is
21 related to the minor by blood, adoption, or affinity within the fifth
22 degree of kinship, including stepparents, stepsiblings, and all
23 relatives whose status is preceded by the words "great,"
24 "great-great," or "grand," or the spouse of any of those persons
25 even if the marriage was terminated by death or dissolution.

26 (l) For purposes of this section, evidence of any of the following
27 circumstances may not, in and of itself, be deemed a failure to
28 provide or offer reasonable services:

29 (1) The child has been placed with a foster family that is eligible
30 to adopt a child, or has been placed in a preadoptive home.

31 (2) The case plan includes services to make and finalize a
32 permanent placement for the child if efforts to reunify fail.

33 (3) Services to make and finalize a permanent placement for
34 the child, if efforts to reunify fail, are provided concurrently with
35 services to reunify the family.

36 (m) The implementation and operation of the amendments to
37 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
38 shall be subject to appropriation through the budget process and
39 by phase, as provided in Section 366.35.

1 SEC. 6. Section 366.22 of the Welfare and Institutions Code
2 is amended to read:

3 366.22. (a) When a case has been continued pursuant to
4 paragraph (1) of subdivision (g) of Section 366.21, the permanency
5 review hearing shall occur within 18 months after the date the
6 child was originally removed from the physical custody of his or
7 her parent or legal guardian. The court shall order the return of the
8 child to the physical custody of his or her parent or legal guardian
9 unless the court finds, by a preponderance of the evidence, that
10 the return of the child to his or her parent or legal guardian would
11 create a substantial risk of detriment to the safety, protection, or
12 physical or emotional well-being of the child. The social worker
13 shall have the burden of establishing that detriment. At the
14 permanency review hearing, the court shall consider the criminal
15 history, obtained pursuant to paragraph (1) of subdivision (f) of
16 Section 16504.5, of the parent or legal guardian subsequent to the
17 child's removal, to the extent that the criminal record is
18 substantially related to the welfare of the child or the parent's or
19 legal guardian's ability to exercise custody and control regarding
20 his or her child, provided that the parent or legal guardian agreed
21 to submit fingerprint images to obtain criminal history information
22 as part of the case plan. The failure of the parent or legal guardian
23 to participate regularly and make substantive progress in
24 court-ordered treatment programs shall be prima facie evidence
25 that return would be detrimental. In making its determination, the
26 court shall review and consider the social worker's report and
27 recommendations and the report and recommendations of any child
28 advocate appointed pursuant to Section 356.5; shall consider the
29 efforts or progress, or both, demonstrated by the parent or legal
30 guardian and the extent to which he or she availed himself or
31 herself of services provided, taking into account the particular
32 barriers of an incarcerated or institutionalized parent or legal
33 guardian's access to those court-mandated services and ability to
34 maintain contact with his or her child; and shall make appropriate
35 findings pursuant to subdivision (a) of Section 366.

36 Whether or not the child is returned to his or her parent or legal
37 guardian, the court shall specify the factual basis for its decision.
38 If the child is not returned to a parent or legal guardian, the court
39 shall specify the factual basis for its conclusion that return would
40 be detrimental. If the child is not returned to his or her parent or

1 legal guardian, the court shall consider, and state for the record,
2 in-state and out-of-state options for the child's permanent
3 placement. If the child is placed out of the state, the court shall
4 make a determination whether the out-of-state placement continues
5 to be appropriate and in the best interests of the child.

6 Unless the conditions in subdivision (b) are met and the child is
7 not returned to a parent or legal guardian at the permanency review
8 hearing, the court shall order that a hearing be held pursuant to
9 Section 366.26 in order to determine whether adoption, *or, in the*
10 *case of an Indian child, in consultation with the child's tribe, tribal*
11 *customary adoption*, guardianship, or long-term foster care is the
12 most appropriate plan for the child. However, if the court finds by
13 clear and convincing evidence, based on the evidence already
14 presented to it, including a recommendation by the State
15 Department of Social Services when it is acting as an adoption
16 agency in counties that are not served by a county adoption agency
17 or by a licensed county adoption agency, that there is a compelling
18 reason, as described in paragraph (3) of subdivision (g) of Section
19 366.21, for determining that a hearing held under Section 366.26
20 is not in the best interest of the child because the child is not a
21 proper subject for adoption and has no one willing to accept legal
22 guardianship, then the court may, only under these circumstances,
23 order that the child remain in foster care. If the court orders that a
24 child who is 10 years of age or older remain in long-term foster
25 care, the court shall determine whether the agency has made
26 reasonable efforts to maintain the child's relationships with
27 individuals other than the child's siblings who are important to the
28 child, consistent with the child's best interests, and may make any
29 appropriate order to ensure that those relationships are maintained.
30 The hearing shall be held no later than 120 days from the date of
31 the permanency review hearing. The court shall also order
32 termination of reunification services to the parent or legal guardian.
33 The court shall continue to permit the parent or legal guardian to
34 visit the child unless it finds that visitation would be detrimental
35 to the child. The court shall determine whether reasonable services
36 have been offered or provided to the parent or legal guardian. For
37 purposes of this subdivision, evidence of any of the following
38 circumstances shall not, in and of themselves, be deemed a failure
39 to provide or offer reasonable services:

1 (1) The child has been placed with a foster family that is eligible
2 to adopt a child, or has been placed in a preadoptive home.

3 (2) The case plan includes services to make and finalize a
4 permanent placement for the child if efforts to reunify fail.

5 (3) Services to make and finalize a permanent placement for
6 the child, if efforts to reunify fail, are provided concurrently with
7 services to reunify the family.

8 (b) If the child is not returned to a parent or legal guardian at
9 the permanency review hearing and the court determines by clear
10 and convincing evidence that the best interests of the child would
11 be met by the provision of additional reunification services to a
12 parent or legal guardian who is making significant and consistent
13 progress in a substance abuse treatment program, or a parent
14 recently discharged from incarceration or institutionalization and
15 making significant and consistent progress in establishing a safe
16 home for the child's return, the court may continue the case for
17 up to six months for a subsequent permanency review hearing,
18 provided that the hearing shall occur within 24 months of the date
19 the child was originally taken from the physical custody of his or
20 her parent or legal guardian. The court shall continue the case only
21 if it finds that there is a substantial probability that the child will
22 be returned to the physical custody of his or her parent or legal
23 guardian and safely maintained in the home within the extended
24 period of time or that reasonable services have not been provided
25 to the parent or legal guardian. For the purposes of this section, in
26 order to find a substantial probability that the child will be returned
27 to the physical custody of his or her parent or legal guardian and
28 safely maintained in the home within the extended period of time,
29 the court shall be required to find all of the following:

30 (1) That the parent or legal guardian has consistently and
31 regularly contacted and visited with the child.

32 (2) That the parent or legal guardian has made significant and
33 consistent progress in the prior 18 months in resolving problems
34 that led to the child's removal from the home.

35 (3) The parent or legal guardian has demonstrated the capacity
36 and ability both to complete the objectives of his or her substance
37 abuse treatment plan as evidenced by reports from a substance
38 abuse provider as applicable, or complete a treatment plan
39 postdischarge from incarceration or institutionalization, and to

1 provide for the child's safety, protection, physical and emotional
2 well-being, and special needs.

3 For purposes of this subdivision, the court's decision to continue
4 the case based on a finding or substantial probability that the child
5 will be returned to the physical custody of his or her parent or legal
6 guardian is a compelling reason for determining that a hearing
7 held pursuant to Section 366.26 is not in the best interests of the
8 child.

9 The court shall inform the parent or legal guardian that if the
10 child cannot be returned home by the subsequent permanency
11 review hearing, a proceeding pursuant to Section 366.26 may be
12 instituted. The court may not order that a hearing pursuant to
13 Section 366.26 be held unless there is clear and convincing
14 evidence that reasonable services have been provided or offered
15 to the parent or legal guardian.

16 (c) (1) Whenever a court orders that a hearing pursuant to
17 Section 366.26, *including when a tribal customary adoption is*
18 *recommended*, shall be held, it shall direct the agency supervising
19 the child and the licensed county adoption agency, or the State
20 Department of Social Services when it is acting as an adoption
21 agency in counties that are not served by a county adoption agency,
22 to prepare an assessment that shall include:

23 (A) Current search efforts for an absent parent or parents.

24 (B) A review of the amount of and nature of any contact between
25 the child and his or her parents and other members of his or her
26 extended family since the time of placement. Although the
27 extended family of each child shall be reviewed on a case-by-case
28 basis, "extended family" for the purposes of this subparagraph
29 shall include, but not be limited to, the child's siblings,
30 grandparents, aunts, and uncles.

31 (C) An evaluation of the child's medical, developmental,
32 scholastic, mental, and emotional status.

33 (D) A preliminary assessment of the eligibility and commitment
34 of any identified prospective adoptive parent or legal guardian,
35 particularly the caretaker, to include a social history including
36 screening for criminal records and prior referrals for child abuse
37 or neglect, the capability to meet the child's needs, and the
38 understanding of the legal and financial rights and responsibilities
39 of adoption and guardianship. If a proposed legal guardian is a
40 relative of the minor, and the relative was assessed for foster care

1 placement of the minor prior to January 1, 1998, the assessment
2 shall also consider, but need not be limited to, all of the factors
3 specified in subdivision (a) of Section 361.3.

4 (E) The relationship of the child to any identified prospective
5 adoptive parent or legal guardian, the duration and character of
6 the relationship, the motivation for seeking adoption or legal
7 guardianship, and a statement from the child concerning placement
8 and the adoption or legal guardianship, unless the child's age or
9 physical, emotional, or other condition precludes his or her
10 meaningful response, and if so, a description of the condition.

11 (F) An analysis of the likelihood that the child will be adopted
12 if parental rights are terminated.

13 (G) *In the case of an Indian child, in addition to subparagraphs*
14 *(A) to (F), inclusive, an assessment of the likelihood that the child*
15 *will be adopted, when, in consultation with the child's tribe, a*
16 *customary tribal adoption, as defined in Section 366.24, is*
17 *recommended. If tribal customary adoption is recommended, the*
18 *assessment shall include an analysis of both of the following:*

19 (i) *Whether tribal customary adoption would or would not be*
20 *detrimental to the Indian child and the reasons for reaching that*
21 *conclusion.*

22 (ii) *Whether the Indian child cannot or should not be returned*
23 *to the home of the Indian parent or Indian custodian and the*
24 *reasons for reaching that conclusion.*

25 (2) (A) A relative caregiver's preference for legal guardianship
26 over adoption, if it is due to circumstances that do not include an
27 unwillingness to accept legal or financial responsibility for the
28 child, shall not constitute the sole basis for recommending removal
29 of the child from the relative caregiver for purposes of adoptive
30 placement.

31 (B) A relative caregiver shall be given information regarding
32 the permanency options of guardianship and adoption, including
33 the long-term benefits and consequences of each option, prior to
34 establishing legal guardianship or pursuing adoption.

35 (d) This section shall become operative January 1, 1999. If at
36 any hearing held pursuant to Section 366.26, a legal guardianship
37 is established for the minor with a relative, and juvenile court
38 dependency is subsequently dismissed, the relative shall be eligible
39 for aid under the Kin-GAP Program, as provided for in Article 4.5

1 (commencing with Section 11360) of Chapter 2 of Part 3 of
2 Division 9.

3 (e) As used in this section, “relative” means an adult who is
4 related to the child by blood, adoption, or affinity within the fifth
5 degree of kinship, including stepparents, stepsiblings, and all
6 relatives whose status is preceded by the words “great,”
7 “great-great,” or “grand,” or the spouse of any of those persons
8 even if the marriage was terminated by death or dissolution.

9 (f) The implementation and operation of the amendments to
10 subdivision (a) enacted at the 2005–06 Regular Session shall be
11 subject to appropriation through the budget process and by phase,
12 as provided in Section 366.35.

13 SEC. 7. Section 366.24 is added to the Welfare and Institutions
14 Code, to read:

15 366.24. (a) For purposes of this section, “tribal customary
16 adoption” means adoption by and through the child’s tribal custom,
17 traditions, or tribal law, but where the termination of parental rights
18 is not required to effect the adoption.

19 (b) Whenever an assessment is ordered pursuant to Section
20 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the
21 assessment shall address the option of tribal customary adoption.

22 (c) Notwithstanding any other provision of law, individuals who
23 may be, will be, or are adoptive parents through a tribal customary
24 adoption shall have all of the rights and privileges afforded to any
25 other adoptive parent pursuant to the laws of this state.

26 (d) For purposes of Section 366.2, in the case of tribal customary
27 adoptions, all of the following apply:

28 (1) The child’s tribe or the tribe’s designee, which may include
29 the State Department of Social Services, when acting as an adoptive
30 agency in counties that are not served by a county adoption agency,
31 the county child welfare agency where the case is being
32 adjudicated, or a California licensed adoption agency, shall conduct
33 an adoptive home study prior to final approval of the adoptive
34 placement. The standard for the evaluation of the prospective
35 adoptive parents’ home shall be the prevailing social and cultural
36 standard of the child’s tribe.

37 (2) If the tribe chooses a designee to conduct the home study,
38 the designee shall perform a check of the Child Abuse Central
39 Index pursuant to Section 1522.1 of the Health and Safety Code
40 as it applies to prospective adoptive parents and persons over 18

1 years of age residing in their household. If the tribe conducts its
2 own home study, the tribe, through the child welfare agency
3 responsible for the dependency action, shall check the Child Abuse
4 Central Index pursuant to Section 1522.1 of the Health and Safety
5 Code as it applies to prospective adoptive parents and persons over
6 18 years of age residing in the household.

7 (3) If the tribe chooses a designee to conduct the home study,
8 the designee shall perform a state and federal criminal background
9 check through the Department of Justice prior to final approval of
10 the adoptive placement using prospective adoptive parents in the
11 State of California. If the tribe conducts its own home study, the
12 tribe, through the child welfare agency responsible for the
13 dependency action, shall perform a state and federal check through
14 the Department of Justice prior to the final approval of the
15 prospective adoptive parents and persons over 18 years of age
16 residing in the household.

17 (4) If federal and state law provides that tribes may conduct all
18 required background checks for prospective adoptive parents, the
19 tribally administered background checks shall satisfy the
20 requirements of this section, so long as the standards for the
21 background checks are the same as those applied to all other
22 prospective adoptive parents in the State of California.

23 (5) Under no circumstances shall final approval be granted for
24 an adoptive placement in any home if the prospective adoptive
25 parent or any adult living in the prospective adoptive home has
26 any of the following:

27 (A) A felony conviction for child abuse or neglect, spousal
28 abuse, crimes against a child, including child pornography, or a
29 crime involving violence, including rape, sexual assault, or
30 homicide, but not including other physical assault and battery. For
31 purposes of this subdivision, crimes involving violence means
32 those violent crimes contained in clause (i) of subparagraph (A)
33 and subparagraph (B), or paragraph (1) of, subdivision (g) of
34 Section 1522 of the Health and Safety Code.

35 (B) A felony conviction that occurred within the last five years
36 for physical assault, battery, or a drug-related offense.

37 (6) If the tribe identifies customary adoption as the permanent
38 placement plan for the Indian child, the court may continue the
39 selection and implementation hearing for a period not to exceed
40 120 days to permit the tribe to complete the process for tribal

1 customary adoption and file with the court a tribal customary
2 adoption order evidencing that a tribal customary adoption has
3 been completed. The court shall have discretion to grant an
4 additional continuance to the tribe for filing a tribal customary
5 adoption order up to, but not exceeding, 60 days. If the child's
6 tribe does not file the tribal customary adoption order within the
7 designated time period, the court shall make new findings and
8 orders pursuant to subdivision (b) of Section 366.26 and this
9 subdivision to determine the best permanent plan for the child.

10 (7) The child, birth parents, or Indian custodian and the tribal
11 customary adoptive parents and their counsel, if applicable, may
12 present evidence to the tribe regarding the tribal customary
13 adoption and the child's best interest.

14 (8) The tribal customary adoption order shall include, but not
15 be limited to, a description of (A) the modification of the legal
16 relationship of the birth parents or Indian custodian and the child,
17 including contact, if any, between the child and the birth parents
18 or Indian custodian, responsibilities of the birth parents or Indian
19 custodian, and the rights of inheritance of the child and (B) the
20 child's legal relationship with the tribe. There shall be a conclusive
21 presumption that any rights or obligations not specified in the tribal
22 customary adoption order shall vest in the tribal customary adoptive
23 parents.

24 (9) Prior consent to a permanent plan of tribal customary
25 adoption of an Indian child shall not be required of an Indian parent
26 or Indian custodian whose parental relationship to the child will
27 be modified by the tribal customary adoption.

28 (10) Nothing in this paragraph is intended to prevent the transfer
29 of those proceedings to a tribal court where transfer is otherwise
30 permitted under applicable law.

31 (11) Consistent with Section 366.3, after the tribal customary
32 adoption has been completed, the tribal customary adoption order
33 of the tribe has been filed, and an order of adoption has been issued,
34 the court shall terminate its jurisdiction over the Indian child.

35 (12) This subdivision shall become operative on July 1, 2010,
36 and shall remain operative only to the extent that compliance with
37 its provisions is required by federal law as a condition of receiving
38 funding under Title IV-E or the federal Social Security Act (42
39 U.S.C. Sec. 670 et seq.).

1 (e) The Judicial Council shall adopt rules of court and necessary
2 forms required to implement tribal customary adoption as a
3 permanent plan for dependent Indian children.

4 SEC. 8. Section 366.25 of the Welfare and Institutions Code
5 is amended to read:

6 366.25. (a) (1) When a case has been continued pursuant to
7 subdivision (b) of Section 366.22, the subsequent permanency
8 review hearing shall occur within 24 months after the date the
9 child was originally removed from the physical custody of his or
10 her parent or legal guardian. The court shall order the return of the
11 child to the physical custody of his or her parent or legal guardian
12 unless the court finds, by a preponderance of the evidence, that
13 the return of the child to his or her parent or legal guardian would
14 create a substantial risk of detriment to the safety, protection, or
15 physical or emotional well-being of the child. The social worker
16 shall have the burden of establishing that detriment. At the
17 subsequent permanency review hearing, the court shall consider
18 the criminal history, obtained pursuant to paragraph (1) of
19 subdivision (f) of Section 16504.5, of the parent or legal guardian
20 subsequent to the child's removal to the extent that the criminal
21 record is substantially related to the welfare of the child or parent
22 or legal guardian's ability to exercise custody and control regarding
23 his or her child provided that the parent or legal guardian agreed
24 to submit fingerprint images to obtain criminal history information
25 as part of the case plan. The failure of the parent or legal guardian
26 to participate regularly and make substantive progress in
27 court-ordered treatment programs shall be prima facie evidence
28 that return would be detrimental. In making its determination, the
29 court shall review and consider the social worker's report and
30 recommendations and the report and recommendations of any child
31 advocate appointed pursuant to Section 356.5; shall consider the
32 efforts or progress, or both, demonstrated by the parent or legal
33 guardian and the extent to which he or she availed himself or
34 herself of services provided; and shall make appropriate findings
35 pursuant to subdivision (a) of Section 366.

36 (2) Whether or not the child is returned to his or her parent or
37 legal guardian, the court shall specify the factual basis for its
38 decision. If the child is not returned to a parent or legal guardian,
39 the court shall specify the factual basis for its conclusion that return
40 would be detrimental. If the child is not returned to his or her

1 parents or legal guardian, the court shall consider and state for the
2 record, in-state and out-of-state options for the child's permanent
3 placement. If the child is placed out of the state, the court shall
4 make a determination whether the out-of-state placement continues
5 to be appropriate and in best interests of the child.

6 (3) If the child is not returned to a parent or legal guardian at
7 the subsequent permanency review hearing, the court shall order
8 that a hearing be held pursuant to Section 366.26 in order to
9 determine whether adoption, *or in the case of an Indian child,*
10 *tribal customary adoption*, guardianship, or long-term foster care
11 is the most appropriate plan for the child. However, if the court
12 finds by clear and convincing evidence, based on the evidence
13 already presented to it, including a recommendation by the State
14 Department of Social Services when it is acting as an adoption
15 agency in counties that are not served by a county adoption agency
16 or by a licensed county adoption agency, that there is a compelling
17 reason, as described in paragraph (3) of subdivision (g) of Section
18 366.21, for determining that a hearing held under Section 366.26
19 is not in the best interest of the child because the child is not a
20 proper subject for adoption *or, in the case of an Indian child, tribal*
21 *customary adoption*, and has no one willing to accept legal
22 guardianship, then the court may, only under these circumstances,
23 order that the child remain in foster care. If the court orders that a
24 child who is 10 years of age or older remain in long-term foster
25 care, the court shall determine whether the agency has made
26 reasonable efforts to maintain the child's relationships with
27 individuals other than the child's siblings who are important to the
28 child, consistent with the child's best interests, and may make any
29 appropriate order to ensure that those relationships are maintained.
30 The hearing shall be held no later than 120 days from the date of
31 the subsequent permanency review hearing. The court shall also
32 order termination of reunification services to the parent or legal
33 guardian. The court shall continue to permit the parent or legal
34 guardian to visit the child unless it finds that visitation would be
35 detrimental to the child. The court shall determine whether
36 reasonable services have been offered or provided to the parent or
37 legal guardian. For purposes of this subdivision, evidence of any
38 of the following circumstances shall not, in and of themselves, be
39 deemed a failure to provide or offer reasonable services:

1 (A) The child has been placed with a foster family that is eligible
2 to adopt a child, or has been placed in a preadoptive home.

3 (B) The case plan includes services to make and finalize a
4 permanent placement for the child if efforts to reunify fail.

5 (C) Services to make and finalize a permanent placement for
6 the child, if efforts to reunify fail, are provided concurrently with
7 services to reunify the family.

8 (b) (1) Whenever a court orders that a hearing pursuant to
9 Section 366.26 shall be held, it shall direct the agency supervising
10 the child and the licensed county adoption agency, or the State
11 Department of Social Services when it is acting as an adoption
12 agency in counties that are not served by a county adoption agency,
13 to prepare an assessment that shall include:

14 (A) Current search efforts for an absent parent or parents.

15 (B) A review of the amount of, and nature of, any contact
16 between the child and his or her parents and other members of his
17 or her extended family since the time of placement. Although the
18 extended family of each child shall be reviewed on a case-by-case
19 basis, “extended family” for the purposes of this paragraph shall
20 include, but not be limited to, the child’s siblings, grandparents,
21 aunts, and uncles.

22 (C) An evaluation of the child’s medical, developmental,
23 scholastic, mental, and emotional status.

24 (D) A preliminary assessment of the eligibility and commitment
25 of any identified prospective adoptive parent or legal guardian,
26 *including a prospective tribal customary adoptive parent*,
27 particularly the caretaker, to include a social history including
28 screening for criminal records and prior referrals for child abuse
29 or neglect, the capability to meet the child’s needs, and the
30 understanding of the legal and financial rights and responsibilities
31 of adoption and guardianship. If a proposed legal guardian is a
32 relative of the minor, and the relative was assessed for foster care
33 placement of the minor prior to January 1, 1998, the assessment
34 shall also consider, but need not be limited to, all of the factors
35 specified in subdivision (a) of Section 361.3.

36 (E) The relationship of the child to any identified prospective
37 adoptive parent or legal guardian, *including a prospective tribal*
38 *customary adoptive parent*, the duration and character of the
39 relationship, the motivation for seeking adoption or legal
40 guardianship, and a statement from the child concerning placement

1 and the adoption or legal guardianship, unless the child's age or
2 physical, emotional, or other condition precludes his or her
3 meaningful response, and if so, a description of the condition.

4 (F) An analysis of the likelihood that the child will be adopted
5 if parental rights are terminated.

6 (G) *In the case of an Indian child, in addition to subparagraphs*
7 *(A) to (F), inclusive, an assessment of the likelihood that the child*
8 *will be adopted, when, in consultation with the child's tribe, a*
9 *customary tribal adoption, as defined in Section 366.24, is*
10 *recommended. If tribal customary adoption is recommended, the*
11 *assessment shall include an analysis of both of the following:*

12 (i) *Whether tribal customary adoption would or would not be*
13 *detrimental to the Indian child and the reasons for reaching that*
14 *conclusion.*

15 (ii) *Whether the Indian child cannot or should not be returned*
16 *to the home of the Indian parent or Indian custodian and the*
17 *reasons for reaching that conclusion.*

18 (2) (A) A relative caregiver's preference for legal guardianship
19 over adoption, if it is due to circumstances that do not include an
20 unwillingness to accept legal or financial responsibility for the
21 child, shall not constitute the sole basis for recommending removal
22 of the child from the relative caregiver for purposes of adoptive
23 placement.

24 (B) A relative caregiver shall be given information regarding
25 the permanency options of guardianship and adoption, including
26 the long-term benefits and consequences of each option, prior to
27 establishing legal guardianship or pursuing adoption.

28 (c) If, at any hearing held pursuant to Section 366.26, a
29 guardianship is established for the minor with a relative, and
30 juvenile court dependency is subsequently dismissed, the relative
31 shall be eligible for aid under the Kin-GAP Program, as provided
32 for in Article 4.5 (commencing with Section 11360) of Chapter 2
33 of Part 3 of Division 9.

34 (d) As used in this section, "relative" means an adult who is
35 related to the minor by blood, adoption, or affinity within the fifth
36 degree of kinship, including stepparents, stepsiblings, and all
37 relatives whose status is preceded by the words "great,"
38 "great-great," or "grand," or the spouse of any of those persons
39 even if the marriage was terminated by death or dissolution.

(e) The implementation and operation of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 9. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8616.5 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, 366.22, or 366.25, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) *Order, without termination of parental rights, a tribal customary adoption, as described in Section 366.24, through the Indian child's tribe's custom, traditions, or tribal law.*

~~(2)~~

1 (3) Appoint a relative or relatives with whom the child is
2 currently residing as legal guardian or guardians for the child, and
3 order that letters of guardianship issue.

4 ~~(3)~~

5 (4) On making a finding under paragraph (3) of subdivision (c),
6 identify adoption as the permanent placement goal and order that
7 efforts be made to locate an appropriate adoptive family for the
8 child within a period not to exceed 180 days.

9 ~~(4)~~

10 (5) Appoint a nonrelative legal guardian for the child and order
11 that letters of guardianship issue.

12 ~~(5)~~

13 (6) Order that the child be placed in long-term foster care,
14 subject to the periodic review of the juvenile court under Section
15 366.3.

16 In choosing among the above alternatives the court shall proceed
17 pursuant to subdivision (c).

18 (c) (1) If the court determines, based on the assessment provided
19 as ordered under subdivision (i) of Section 366.21, subdivision (b)
20 of Section 366.22, or subdivision (b) of Section 366.25, and any
21 other relevant evidence, by a clear and convincing standard, that
22 it is likely the child will be adopted, the court shall terminate
23 parental rights and order the child placed for adoption. The fact
24 that the child is not yet placed in a preadoptive home nor with a
25 relative or foster family who is prepared to adopt the child, shall
26 not constitute a basis for the court to conclude that it is not likely
27 the child will be adopted. A finding under subdivision (b) or
28 paragraph (1) of subdivision (e) of Section 361.5 that reunification
29 services shall not be offered, under subdivision (e) of Section
30 366.21 that the whereabouts of a parent have been unknown for
31 six months or that the parent has failed to visit or contact the child
32 for six months, or that the parent has been convicted of a felony
33 indicating parental unfitness, or, under Section 366.21 or 366.22,
34 that the court has continued to remove the child from the custody
35 of the parent or guardian and has terminated reunification services,
36 shall constitute a sufficient basis for termination of parental rights.
37 Under these circumstances, the court shall terminate parental rights
38 unless either of the following applies:

39 (A) The child is living with a relative who is unable or unwilling
40 to adopt the child because of circumstances that do not include an

1 unwillingness to accept legal or financial responsibility for the
2 child, but who is willing and capable of providing the child with
3 a stable and permanent environment through legal guardianship,
4 and the removal of the child from the custody of his or her relative
5 would be detrimental to the emotional well-being of the child. For
6 purposes of an Indian child, “relative” shall include an “extended
7 family member,” as defined in the federal Indian Child Welfare
8 Act (25 U.S.C. Sec. 1903(2)).

9 (B) The court finds a compelling reason for determining that
10 termination would be detrimental to the child due to one or more
11 of the following circumstances:

12 (i) The parents have maintained regular visitation and contact
13 with the child and the child would benefit from continuing the
14 relationship.

15 (ii) A child 12 years of age or older objects to termination of
16 parental rights.

17 (iii) The child is placed in a residential treatment facility,
18 adoption is unlikely or undesirable, and continuation of parental
19 rights will not prevent finding the child a permanent family
20 placement if the parents cannot resume custody when residential
21 care is no longer needed.

22 (iv) The child is living with a foster parent or Indian custodian
23 who is unable or unwilling to adopt the child because of
24 exceptional circumstances, that do not include an unwillingness
25 to accept legal or financial responsibility for the child, but who is
26 willing and capable of providing the child with a stable and
27 permanent environment and the removal of the child from the
28 physical custody of his or her foster parent or Indian custodian
29 would be detrimental to the emotional well-being of the child. This
30 clause does not apply to any child who is either (I) under six years
31 of age or (II) a member of a sibling group where at least one child
32 is under six years of age and the siblings are, or should be,
33 permanently placed together.

34 (v) There would be substantial interference with a child’s sibling
35 relationship, taking into consideration the nature and extent of the
36 relationship, including, but not limited to, whether the child was
37 raised with a sibling in the same home, whether the child shared
38 significant common experiences or has existing close and strong
39 bonds with a sibling, and whether ongoing contact is in the child’s

1 best interest, including the child's long-term emotional interest,
2 as compared to the benefit of legal permanence through adoption.

3 (vi) The child is an Indian child and there is a compelling reason
4 for determining that termination of parental rights would not be
5 in the best interest of the child, including, but not limited to:

6 (I) Termination of parental rights would substantially interfere
7 with the child's connection to his or her tribal community or the
8 child's tribal membership rights.

9 (II) The child's tribe has identified guardianship, long-term
10 foster care with a fit and willing relative, *tribal customary adoption*,
11 or another planned permanent living arrangement for the child.

12 (C) *For purposes of subparagraph (B), in the case of tribal*
13 *customary adoptions, Section 366.24 shall apply.*

14 If

15 (D) *If the court finds that termination of parental rights would*
16 *be detrimental to the child pursuant to clause (i), (ii), (iii), (iv),*
17 *(v), or (vi), it shall state its reasons in writing or on the record.*

18 (2) The court shall not terminate parental rights if:

19 (A) At each hearing at which the court was required to consider
20 reasonable efforts or services, the court has found that reasonable
21 efforts were not made or that reasonable services were not offered
22 or provided.

23 (B) In the case of an Indian child:

24 (i) At the hearing terminating parental rights, the court has found
25 that active efforts were not made as required in Section 361.7.

26 (ii) The court does not make a determination at the hearing
27 terminating parental rights, supported by evidence beyond a
28 reasonable doubt, including testimony of one or more "qualified
29 expert witnesses" as defined in Section 224.6, that the continued
30 custody of the child by the parent is likely to result in serious
31 emotional or physical damage to the child.

32 (iii) *The court has ordered tribal customary adoption pursuant*
33 *to Section 366.24.*

34 (3) If the court finds that termination of parental rights would
35 not be detrimental to the child pursuant to paragraph (1) and that
36 the child has a probability for adoption but is difficult to place for
37 adoption and there is no identified or available prospective adoptive
38 parent, the court may identify adoption as the permanent placement
39 goal and without terminating parental rights, order that efforts be
40 made to locate an appropriate adoptive family for the child, within

1 the state or out of the state, within a period not to exceed 180 days.
2 During this 180-day period, the public agency responsible for
3 seeking adoptive parents for each child shall, to the extent possible,
4 ask each child who is 10 years of age or older, to identify any
5 individuals, other than the child's siblings, who are important to
6 the child, in order to identify potential adoptive parents. The public
7 agency may ask any other child to provide that information, as
8 appropriate. During the 180-day period, the public agency shall,
9 to the extent possible, contact other private and public adoption
10 agencies regarding the availability of the child for adoption. During
11 the 180-day period, the public agency shall conduct the search for
12 adoptive parents in the same manner as prescribed for children in
13 Sections 8708 and 8709 of the Family Code. At the expiration of
14 this period, another hearing shall be held and the court shall
15 proceed pursuant to paragraph (1), (2), (3), (5), or ~~(4)~~ (6) of
16 subdivision (b). For purposes of this section, a child may only be
17 found to be difficult to place for adoption if there is no identified
18 or available prospective adoptive parent for the child because of
19 the child's membership in a sibling group, or the presence of a
20 diagnosed medical, physical, or mental handicap, or the child is
21 seven years of age or more.

22 (4) (A) If the court finds that adoption of the child or
23 termination of parental rights is not in the best interest of the child,
24 because one of the conditions in clause (i), (ii), (iii), (iv), (v), or
25 (vi) of subparagraph (B) of paragraph (1) or in paragraph (2)
26 applies, the court shall either order that the present caretakers or
27 other appropriate persons shall become legal guardians of the child
28 ~~or~~, order that the child remain in long-term foster care, *or, in the*
29 *case of an Indian child, consider a tribal customary adoption*
30 *pursuant to Section 366.24.* Legal guardianship shall be considered
31 before long-term foster care, if it is in the best interests of the child
32 and if a suitable guardian can be found. A child who is 10 years
33 of age or older, shall be asked to identify any individuals, other
34 than the child's siblings, who are important to the child, in order
35 to identify potential guardians *or, in the case of an Indian child,*
36 *prospective tribal customary adoptive parents.* The agency may
37 ask any other child to provide that information, as appropriate.

38 (B) If the child is living with a relative or a foster parent who
39 is willing and capable of providing a stable and permanent
40 environment, but not willing to become a legal guardian, the child

1 shall not be removed from the home if the court finds the removal
2 would be seriously detrimental to the emotional well-being of the
3 child because the child has substantial psychological ties to the
4 relative caretaker or foster parents.

5 (C) The court shall also make an order for visitation with the
6 parents or guardians unless the court finds by a preponderance of
7 the evidence that the visitation would be detrimental to the physical
8 or emotional well-being of the child.

9 (5) If the court finds that the child should not be placed for
10 adoption, that legal guardianship shall not be established, and that
11 there are no suitable foster parents except exclusive-use homes
12 available to provide the child with a stable and permanent
13 environment, the court may order the care, custody, and control
14 of the child transferred from the county welfare department to a
15 licensed foster family agency. The court shall consider the written
16 recommendation of the county welfare director regarding the
17 suitability of the transfer. The transfer shall be subject to further
18 court orders.

19 The licensed foster family agency shall place the child in a
20 suitable licensed or exclusive-use home that has been certified by
21 the agency as meeting licensing standards. The licensed foster
22 family agency shall be responsible for supporting the child and
23 providing appropriate services to the child, including those services
24 ordered by the court. Responsibility for the support of the child
25 shall not, in and of itself, create liability on the part of the foster
26 family agency to third persons injured by the child. Those children
27 whose care, custody, and control are transferred to a foster family
28 agency shall not be eligible for foster care maintenance payments
29 or child welfare services, except for emergency response services
30 pursuant to Section 16504.

31 (d) The proceeding for the appointment of a guardian for a child
32 who is a dependent of the juvenile court shall be in the juvenile
33 court. If the court finds pursuant to this section that legal
34 guardianship is the appropriate permanent plan, it shall appoint
35 the legal guardian and issue letters of guardianship. The assessment
36 prepared pursuant to subdivision (g) of Section 361.5, subdivision
37 (i) of Section 366.21, subdivision (b) of Section 366.22, and
38 subdivision (b) of Section 366.25 shall be read and considered by
39 the court prior to the appointment, and this shall be reflected in

1 the minutes of the court. The person preparing the assessment may
2 be called and examined by any party to the proceeding.

3 (e) (1) The proceeding for the adoption of a child who is a
4 dependent of the juvenile court shall be in the juvenile court if the
5 court finds pursuant to this section that adoption is the appropriate
6 permanent plan and the petition for adoption is filed in the juvenile
7 court. Upon the filing of a petition for adoption, the juvenile court
8 shall order that an adoption hearing be set. The court shall proceed
9 with the adoption after the appellate rights of the natural parents
10 have been exhausted. The full report required by Section 8715 of
11 the Family Code shall be read and considered by the court prior
12 to the adoption and this shall be reflected in the minutes of the
13 court. The person preparing the report may be called and examined
14 by any party to the proceeding. It is the intent of the Legislature,
15 pursuant to this subdivision, to give potential adoptive parents the
16 option of filing in the juvenile court the petition for the adoption
17 of a child who is a dependent of the juvenile court. Nothing in this
18 section is intended to prevent the filing of a petition for adoption
19 in any other court as permitted by law, instead of in the juvenile
20 court.

21 (2) *In the case of an Indian child, if the Indian child's tribe has*
22 *elected a permanent plan of tribal customary adoption, the court*
23 *shall order that an adoption hearing be set, at which time the tribal*
24 *customary adoption order shall be filed in the court. The court,*
25 *upon receiving the tribal customary adoption order, will afford*
26 *the tribal customary adoption order full faith and credit to the*
27 *same extent that the court would afford full faith and credit to the*
28 *public acts, records, judicial proceedings, and judgments of any*
29 *other entity, consistent with Section 224.5, and thereafter issue an*
30 *order of adoption consistent with Section 366.24.*

31 (f) At the beginning of any proceeding pursuant to this section,
32 if the child or the parents are not being represented by previously
33 retained or appointed counsel, the court shall proceed as follows:

34 (1) In accordance with subdivision (c) of Section 317, if a child
35 before the court is without counsel, the court shall appoint counsel
36 unless the court finds that the child would not benefit from the
37 appointment of counsel. The court shall state on the record its
38 reasons for that finding.

39 (2) If a parent appears without counsel and is unable to afford
40 counsel, the court shall appoint counsel for the parent, unless this

1 representation is knowingly and intelligently waived. The same
2 counsel shall not be appointed to represent both the child and his
3 or her parent. The public defender or private counsel may be
4 appointed as counsel for the parent.

5 (3) Private counsel appointed under this section shall receive a
6 reasonable sum for compensation and expenses, the amount of
7 which shall be determined by the court. The amount shall be paid
8 by the real parties in interest, other than the child, in any
9 proportions the court deems just. However, if the court finds that
10 any of the real parties in interest are unable to afford counsel, the
11 amount shall be paid out of the general fund of the county.

12 (g) The court may continue the proceeding for a period of time
13 not to exceed 30 days as necessary to appoint counsel, and to
14 enable counsel to become acquainted with the case.

15 (h) (1) At all proceedings under this section, the court shall
16 consider the wishes of the child and shall act in the best interests
17 of the child.

18 (2) In accordance with Section 349, the child shall be present
19 in court if the child or the child's counsel so requests or the court
20 so orders. If the child is 10 years of age or older and is not present
21 at a hearing held pursuant to this section, the court shall determine
22 whether the minor was properly notified of his or her right to attend
23 the hearing and inquire as to the reason why the child is not present.

24 (3) (A) The testimony of the child may be taken in chambers
25 and outside the presence of the child's parent or parents, if the
26 child's parent or parents are represented by counsel, the counsel
27 is present, and any of the following circumstances exists:

28 (i) The court determines that testimony in chambers is necessary
29 to ensure truthful testimony.

30 (ii) The child is likely to be intimidated by a formal courtroom
31 setting.

32 (iii) The child is afraid to testify in front of his or her parent or
33 parents.

34 (B) After testimony in chambers, the parent or parents of the
35 child may elect to have the court reporter read back the testimony
36 or have the testimony summarized by counsel for the parent or
37 parents.

38 (C) The testimony of a child also may be taken in chambers and
39 outside the presence of the guardian or guardians of a child under
40 the circumstances specified in this subdivision.

1 (i) (1) Any order of the court permanently terminating parental
2 rights under this section shall be conclusive and binding upon the
3 child, upon the parent or parents and upon all other persons who
4 have been served with citation by publication or otherwise as
5 provided in this chapter. After making the order, the juvenile court
6 shall have no power to set aside, change, or modify it, except as
7 provided in paragraph (2), but nothing in this section shall be
8 construed to limit the right to appeal the order.

9 (2) *A tribal customary adoption order evidencing that the Indian*
10 *child has been the subject of a tribal customary adoption shall be*
11 *afforded full faith and credit and shall have the same force and*
12 *effect as an order of adoption authorized by this section. The rights*
13 *and obligations of the parties as to the matters determined by the*
14 *Indian child's tribe shall be binding on all parties. A court shall*
15 *not order compliance with the order absent a finding that the party*
16 *seeking the enforcement participated, or attempted to participate,*
17 *in good faith, in family mediation services of the court or dispute*
18 *resolution through the tribe regarding the conflict, prior to the*
19 *filing of the enforcement action.*

20 ~~(2)~~

21 (3) A child who has not been adopted after the passage of at
22 least three years from the date the court terminated parental rights
23 and for whom the court has determined that adoption is no longer
24 the permanent plan may petition the juvenile court to reinstate
25 parental rights pursuant to the procedure prescribed by Section
26 388. The child may file the petition prior to the expiration of this
27 three-year period if the State Department of Social Services or
28 licensed adoption agency that is responsible for custody and
29 supervision of the child as described in subdivision (j) and the
30 child stipulate that the child is no longer likely to be adopted. A
31 child over 12 years of age shall sign the petition in the absence of
32 a showing of good cause as to why the child could not do so. If it
33 appears that the best interests of the child may be promoted by
34 reinstatement of parental rights, the court shall order that a hearing
35 be held and shall give prior notice, or cause prior notice to be
36 given, to the social worker or probation officer and to the child's
37 attorney of record, or, if there is no attorney of record for the child,
38 to the child, and the child's tribe, if applicable, by means prescribed
39 by subdivision (c) of Section 297. The court shall order the child
40 or the social worker or probation officer to give prior notice of the

1 hearing to the child's former parent or parents whose parental
2 rights were terminated in the manner prescribed by subdivision
3 (f) of Section 294 where the recommendation is adoption. The
4 juvenile court shall grant the petition if it finds by clear and
5 convincing evidence that the child is no longer likely to be adopted
6 and that reinstatement of parental rights is in the child's best
7 interest. If the court reinstates parental rights over a child who is
8 under 12 years of age and for whom the new permanent plan will
9 not be reunification with a parent or legal guardian, the court shall
10 specify the factual basis for its findings that it is in the best interest
11 of the child to reinstate parental rights. This subdivision is intended
12 to be retroactive and applies to any child who is under the
13 jurisdiction of the juvenile court at the time of the hearing
14 regardless of the date parental rights were terminated.

15 (j) If the court, by order or judgment, declares the child free
16 from the custody and control of both parents, or one parent if the
17 other does not have custody and control, the court shall at the same
18 time order the child referred to the State Department of Social
19 Services or a licensed adoption agency for adoptive placement by
20 the agency. However, a petition for adoption may not be granted
21 until the appellate rights of the natural parents have been exhausted.
22 The State Department of Social Services or licensed adoption
23 agency shall be responsible for the custody and supervision of the
24 child and shall be entitled to the exclusive care and control of the
25 child at all times until a petition for adoption is granted, except as
26 specified in subdivision (n). With the consent of the agency, the
27 court may appoint a guardian of the child, who shall serve until
28 the child is adopted.

29 (k) Notwithstanding any other provision of law, the application
30 of any person who, as a relative caretaker or foster parent, has
31 cared for a dependent child for whom the court has approved a
32 permanent plan for adoption, or who has been freed for adoption,
33 shall be given preference with respect to that child over all other
34 applications for adoptive placement if the agency making the
35 placement determines that the child has substantial emotional ties
36 to the relative caretaker or foster parent and removal from the
37 relative caretaker or foster parent would be seriously detrimental
38 to the child's emotional well-being.

39 As used in this subdivision, "preference" means that the
40 application shall be processed and, if satisfactory, the family study

1 shall be completed before the processing of the application of any
2 other person for the adoptive placement of the child.

3 (I) (1) An order by the court that a hearing pursuant to this
4 section be held is not appealable at any time unless all of the
5 following apply:

6 (A) A petition for extraordinary writ review was filed in a timely
7 manner.

8 (B) The petition substantively addressed the specific issues to
9 be challenged and supported that challenge by an adequate record.

10 (C) The petition for extraordinary writ review was summarily
11 denied or otherwise not decided on the merits.

12 (2) Failure to file a petition for extraordinary writ review within
13 the period specified by rule, to substantively address the specific
14 issues challenged, or to support that challenge by an adequate
15 record shall preclude subsequent review by appeal of the findings
16 and orders made pursuant to this section.

17 (3) The Judicial Council shall adopt rules of court, effective
18 January 1, 1995, to ensure all of the following:

19 (A) A trial court, after issuance of an order directing a hearing
20 pursuant to this section be held, shall advise all parties of the
21 requirement of filing a petition for extraordinary writ review as
22 set forth in this subdivision in order to preserve any right to appeal
23 in these issues. This notice shall be made orally to a party if the
24 party is present at the time of the making of the order or by
25 first-class mail by the clerk of the court to the last known address
26 of a party not present at the time of the making of the order.

27 (B) The prompt transmittal of the records from the trial court
28 to the appellate court.

29 (C) That adequate time requirements for counsel and court
30 personnel exist to implement the objective of this subdivision.

31 (D) That the parent or guardian, or their trial counsel or other
32 counsel, is charged with the responsibility of filing a petition for
33 extraordinary writ relief pursuant to this subdivision.

34 (4) The intent of this subdivision is to do both of the following:

35 (A) Make every reasonable attempt to achieve a substantive and
36 meritorious review by the appellate court within the time specified
37 in Sections 366.21, 366.22, and 366.25 for holding a hearing
38 pursuant to this section.

39 (B) Encourage the appellate court to determine all writ petitions
40 filed pursuant to this subdivision on their merits.

1 (5) This subdivision shall only apply to cases in which an order
2 to set a hearing pursuant to this section is issued on or after January
3 1, 1995.

4 (m) Except for subdivision (j), this section shall also apply to
5 minors adjudged wards pursuant to Section 727.31.

6 (n) (1) Notwithstanding Section 8704 of the Family Code or
7 any other provision of law, the court, at a hearing held pursuant
8 to this section or anytime thereafter, may designate a current
9 caretaker as a prospective adoptive parent if the child has lived
10 with the caretaker for at least six months, the caretaker currently
11 expresses a commitment to adopt the child, and the caretaker has
12 taken at least one step to facilitate the adoption process. In
13 determining whether to make that designation, the court may take
14 into consideration whether the caretaker is listed in the preliminary
15 assessment prepared by the county department in accordance with
16 subdivision (i) of Section 366.21 as an appropriate person to be
17 considered as an adoptive parent for the child and the
18 recommendation of the State Department of Social Services or
19 licensed adoption agency.

20 (2) For purposes of this subdivision, steps to facilitate the
21 adoption process include, but are not limited to, the following:

22 (A) Applying for an adoption home study.

23 (B) Cooperating with an adoption home study.

24 (C) Being designated by the court or the licensed adoption
25 agency as the adoptive family.

26 (D) Requesting de facto parent status.

27 (E) Signing an adoptive placement agreement.

28 (F) Engaging in discussions regarding a postadoption contact
29 agreement.

30 (G) Working to overcome any impediments that have been
31 identified by the State Department of Social Services and the
32 licensed adoption agency.

33 (H) Attending classes required of prospective adoptive parents.

34 (3) Prior to a change in placement and as soon as possible after
35 a decision is made to remove a child from the home of a designated
36 prospective adoptive parent, the agency shall notify the court, the
37 designated prospective adoptive parent or the current caretaker, if
38 that caretaker would have met the threshold criteria to be
39 designated as a prospective adoptive parent pursuant to paragraph
40 (1) on the date of service of this notice, the child's attorney, and

1 the child, if the child is 10 years of age or older, of the proposal
2 in the manner described in Section 16010.6.

3 (A) Within five court days or seven calendar days, whichever
4 is longer, of the date of notification, the child, the child's attorney,
5 or the designated prospective adoptive parent may file a petition
6 with the court objecting to the proposal to remove the child, or the
7 court, upon its own motion, may set a hearing regarding the
8 proposal. The court may, for good cause, extend the filing period.
9 A caretaker who would have met the threshold criteria to be
10 designated as a prospective adoptive parent pursuant to paragraph
11 (1) on the date of service of the notice of proposed removal of the
12 child may file, together with the petition under this subparagraph,
13 a petition for an order designating the caretaker as a prospective
14 adoptive parent for purposes of this subdivision.

15 (B) A hearing ordered pursuant to this paragraph shall be held
16 as soon as possible and not later than five court days after the
17 petition is filed with the court or the court sets a hearing upon its
18 own motion, unless the court for good cause is unable to set the
19 matter for hearing five court days after the petition is filed, in
20 which case the court shall set the matter for hearing as soon as
21 possible. At the hearing, the court shall determine whether the
22 caretaker has met the threshold criteria to be designated as a
23 prospective adoptive parent pursuant to paragraph (1), and whether
24 the proposed removal of the child from the home of the designated
25 prospective adoptive parent is in the child's best interest, and the
26 child may not be removed from the home of the designated
27 prospective adoptive parent unless the court finds that removal is
28 in the child's best interest. If the court determines that the caretaker
29 did not meet the threshold criteria to be designated as a prospective
30 adoptive parent on the date of service of the notice of proposed
31 removal of the child, the petition objecting to the proposed removal
32 filed by the caretaker shall be dismissed. If the caretaker was
33 designated as a prospective adoptive parent prior to this hearing,
34 the court shall inquire into any progress made by the caretaker
35 towards the adoption of the child since the caretaker was designated
36 as a prospective adoptive parent.

37 (C) A determination by the court that the caretaker is a
38 designated prospective adoptive parent pursuant to paragraph (1)
39 or subparagraph (B) does not make the caretaker a party to the
40 dependency proceeding nor does it confer on the caretaker any

1 standing to object to any other action of the department or licensed
2 adoption agency, unless the caretaker has been declared a de facto
3 parent by the court prior to the notice of removal served pursuant
4 to paragraph (3).

5 (D) If a petition objecting to the proposal to remove the child
6 is not filed, and the court, upon its own motion, does not set a
7 hearing, the child may be removed from the home of the designated
8 prospective adoptive parent without a hearing.

9 (4) Notwithstanding paragraph (3), if the State Department of
10 Social Services or a licensed adoption agency determines that the
11 child must be removed from the home of the caretaker who is or
12 may be a designated prospective adoptive parent immediately, due
13 to a risk of physical or emotional harm, the agency may remove
14 the child from that home and is not required to provide notice prior
15 to the removal. However, as soon as possible and not longer than
16 two court days after the removal, the agency shall notify the court,
17 the caretaker who is or may be a designated prospective adoptive
18 parent, the child's attorney, and the child, if the child is 10 years
19 of age or older, of the removal. Within five court days or seven
20 calendar days, whichever is longer, of the date of notification of
21 the removal, the child, the child's attorney, or the caretaker who
22 is or may be a designated prospective adoptive parent may petition
23 for, or the court on its own motion may set, a noticed hearing
24 pursuant to paragraph (3). The court may, for good cause, extend
25 the filing period.

26 (5) Except as provided in subdivision (b) of Section 366.28, an
27 order by the court issued after a hearing pursuant to this subdivision
28 shall not be appealable.

29 (6) Nothing in this section shall preclude a county child
30 protective services agency from fully investigating and responding
31 to alleged abuse or neglect of a child pursuant to Section 11165.5
32 of the Penal Code.

33 (7) The Judicial Council shall prepare forms to facilitate the
34 filing of the petitions described in this subdivision, which shall
35 become effective on January 1, 2006.

36 (o) The implementation and operation of the amendments to
37 paragraph (3) of subdivision (c) and subparagraph (A) of paragraph
38 (4) of subdivision (c) enacted at the 2005–06 Regular Session shall
39 be subject to appropriation through the budget process and by
40 phase, as provided in Section 366.35.

1 SEC. 10. Section 366.3 of the Welfare and Institutions Code
2 is amended to read:

3 366.3. (a) If a juvenile court orders a permanent plan of
4 adoption, *tribal customary adoption*, or legal guardianship pursuant
5 to Section 360 or 366.26, the court shall retain jurisdiction over
6 the child until the child is adopted or the legal guardianship is
7 established, except as provided for in Section 366.29. The status
8 of the child shall be reviewed every six months to ensure that the
9 adoption or legal guardianship is completed as expeditiously as
10 possible. When the adoption of the child has been granted, *or the*
11 *tribal customary adoption order has been filed with the court*
12 *pursuant to Section 366.26*, the court shall terminate its jurisdiction
13 over the child. Following establishment of a legal guardianship,
14 the court may continue jurisdiction over the child as a dependent
15 child of the juvenile court or may terminate its dependency
16 jurisdiction and retain jurisdiction over the child as a ward of the
17 legal guardianship, as authorized by Section 366.4. If, however, a
18 relative of the child is appointed the legal guardian of the child
19 and the child has been placed with the relative for at least 12
20 months, the court shall, except if the relative guardian objects, or
21 upon a finding of exceptional circumstances, terminate its
22 dependency jurisdiction and retain jurisdiction over the child as a
23 ward of the guardianship, as authorized by Section 366.4.
24 Following a termination of parental rights, the parent or parents
25 shall not be a party to, or receive notice of, any subsequent
26 proceedings regarding the child.

27 (b) If the court has dismissed dependency jurisdiction following
28 the establishment of a legal guardianship, or no dependency
29 jurisdiction attached because of the granting of a legal guardianship
30 pursuant to Section 360, and the legal guardianship is subsequently
31 revoked or otherwise terminated, the county department of social
32 services or welfare department shall notify the juvenile court of
33 this fact. The court may vacate its previous order dismissing
34 dependency jurisdiction over the child.

35 Notwithstanding Section 1601 of the Probate Code, the
36 proceedings to terminate a legal guardianship that has been granted
37 pursuant to Section 360 or 366.26 shall be held either in the
38 juvenile court that retains jurisdiction over the guardianship as
39 authorized by Section 366.4 or the juvenile court in the county
40 where the guardian and child currently reside, based on the best

1 interests of the child, unless the termination is due to the
2 emancipation or adoption of the child. The juvenile court having
3 jurisdiction over the guardianship shall receive notice from the
4 court in which the petition is filed within five calendar days of the
5 filing. Prior to the hearing on a petition to terminate legal
6 guardianship pursuant to this subdivision, the court shall order the
7 county department of social services or welfare department having
8 jurisdiction or jointly with the county department where the
9 guardian and child currently reside to prepare a report, for the
10 court's consideration, that shall include an evaluation of whether
11 the child could safely remain in, or be returned to, the legal
12 guardian's home, without terminating the legal guardianship, if
13 services were provided to the child or legal guardian. If applicable,
14 the report shall also identify recommended family maintenance or
15 reunification services to maintain the legal guardianship and set
16 forth a plan for providing those services. If the petition to terminate
17 legal guardianship is granted, either juvenile court may resume
18 dependency jurisdiction over the child, and may order the county
19 department of social services or welfare department to develop a
20 new permanent plan, which shall be presented to the court within
21 60 days of the termination. If no dependency jurisdiction has
22 attached, the social worker shall make any investigation he or she
23 deems necessary to determine whether the child may be within the
24 jurisdiction of the juvenile court, as provided in Section 328.

25 Unless the parental rights of the child's parent or parents have
26 been terminated, they shall be notified that the legal guardianship
27 has been revoked or terminated and shall be entitled to participate
28 in the new permanency planning hearing. The court shall try to
29 place the child in another permanent placement. At the hearing,
30 the parents may be considered as custodians but the child shall not
31 be returned to the parent or parents unless they prove, by a
32 preponderance of the evidence, that reunification is the best
33 alternative for the child. The court may, if it is in the best interests
34 of the child, order that reunification services again be provided to
35 the parent or parents.

36 (c) If, following the establishment of a legal guardianship, the
37 county welfare department becomes aware of changed
38 circumstances that indicate adoption *or, for an Indian child, tribal*
39 *customary adoption*, may be an appropriate plan for the child, the
40 department shall so notify the court. The court may vacate its

1 previous order dismissing dependency jurisdiction over the child
2 and order that a hearing be held pursuant to Section 366.26 to
3 determine whether adoption or continued legal guardianship is the
4 most appropriate plan for the child. The hearing shall be held no
5 later than 120 days from the date of the order. If the court orders
6 that a hearing shall be held pursuant to Section 366.26, the court
7 shall direct the agency supervising the child and the licensed county
8 adoption agency, or the State Department of Social Services if it
9 is acting as an adoption agency in counties that are not served by
10 a county adoption agency, to prepare an assessment under
11 subdivision (b) of Section 366.22.

12 (d) If the child is in a placement other than the home of a legal
13 guardian and jurisdiction has not been dismissed, the status of the
14 child shall be reviewed at least every six months. The review of
15 the status of a child for whom the court has ordered parental rights
16 terminated and who has been ordered placed for adoption shall be
17 conducted by the court. The review of the status of a child for
18 whom the court has not ordered parental rights terminated and
19 who has not been ordered placed for adoption may be conducted
20 by the court or an appropriate local agency. The court shall conduct
21 the review under the following circumstances:

22 (1) Upon the request of the child's parents or legal guardians.

23 (2) Upon the request of the child.

24 (3) It has been 12 months since a hearing held pursuant to
25 Section 366.26 or an order that the child remain in long-term foster
26 care pursuant to Section 366.21, 366.22, 366.25, 366.26, or
27 subdivision (h).

28 (4) It has been 12 months since a review was conducted by the
29 court.

30 The court shall determine whether or not reasonable efforts to
31 make and finalize a permanent placement for the child have been
32 made.

33 (e) Except as provided in subdivision (g), at the review held
34 every six months pursuant to subdivision (d), the reviewing body
35 shall inquire about the progress being made to provide a permanent
36 home for the child, shall consider the safety of the child, and shall
37 determine all of the following:

38 (1) The continuing necessity for, and appropriateness of, the
39 placement.

1 (2) Identification of individuals other than the child's siblings
2 who are important to a child who is 10 years of age or older and
3 has been in out-of-home placement for six months or longer, and
4 actions necessary to maintain the child's relationship with those
5 individuals, provided that those relationships are in the best interest
6 of the child. The social worker shall ask every child who is 10
7 years of age or older and who has been in out-of-home placement
8 for six months or longer to identify individuals other than the
9 child's siblings who are important to the child, and may ask any
10 other child to provide that information, as appropriate. The social
11 worker shall make efforts to identify other individuals who are
12 important to the child, consistent with the child's best interests.

13 (3) The continuing appropriateness and extent of compliance
14 with the permanent plan for the child, including efforts to maintain
15 relationships between a child who is 10 years of age or older and
16 who has been in out-of-home placement for six months or longer
17 and individuals who are important to the child and efforts to
18 identify a prospective adoptive parent or legal guardian, including,
19 but not limited to, child-specific recruitment efforts and listing on
20 an adoption exchange.

21 (4) The extent of the agency's compliance with the child welfare
22 services case plan in making reasonable efforts either to return the
23 child to the safe home of the parent or to complete whatever steps
24 are necessary to finalize the permanent placement of the child. If
25 the reviewing body determines that a second period of reunification
26 services is in the child's best interests, and that there is a significant
27 likelihood of the child's return to a safe home due to changed
28 circumstances of the parent, pursuant to subdivision (f), the specific
29 reunification services required to effect the child's return to a safe
30 home shall be described.

31 (5) Whether there should be any limitation on the right of the
32 parent or guardian to make educational decisions for the child.
33 That limitation shall be specifically addressed in the court order
34 and may not exceed what is necessary to protect the child. If the
35 court specifically limits the right of the parent or guardian to make
36 educational decisions for the child, the court shall at the same time
37 appoint a responsible adult to make educational decisions for the
38 child pursuant to Section 361.

39 (6) The adequacy of services provided to the child. The court
40 shall consider the progress in providing the information and

1 documents to the child, as described in Section 391. The court
2 shall also consider the need for, and progress in providing, the
3 assistance and services described in paragraphs (3) and (4) of
4 subdivision (b) of Section 391.

5 (7) The extent of progress the parents or legal guardians have
6 made toward alleviating or mitigating the causes necessitating
7 placement in foster care.

8 (8) The likely date by which the child may be returned to, and
9 safely maintained in, the home, placed for adoption, legal
10 guardianship, ~~or~~ in another planned permanent living arrangement,
11 *or, for an Indian child, in consultation with the child's tribe, placed*
12 *for tribal customary adoption.*

13 (9) Whether the child has any siblings under the court's
14 jurisdiction, and, if any siblings exist, all of the following:

15 (A) The nature of the relationship between the child and his or
16 her siblings.

17 (B) The appropriateness of developing or maintaining the sibling
18 relationships pursuant to Section 16002.

19 (C) If the siblings are not placed together in the same home,
20 why the siblings are not placed together and what efforts are being
21 made to place the siblings together, or why those efforts are not
22 appropriate.

23 (D) If the siblings are not placed together, the frequency and
24 nature of the visits between siblings.

25 (E) The impact of the sibling relationships on the child's
26 placement and planning for legal permanence.

27 The factors the court may consider as indicators of the nature of
28 the child's sibling relationships include, but are not limited to,
29 whether the siblings were raised together in the same home,
30 whether the siblings have shared significant common experiences
31 or have existing close and strong bonds, whether either sibling
32 expresses a desire to visit or live with his or her sibling, as
33 applicable, and whether ongoing contact is in the child's best
34 emotional interests.

35 (10) For a child who is 16 years of age or older, the services
36 needed to assist the child to make the transition from foster care
37 to independent living.

38 The reviewing body shall determine whether or not reasonable
39 efforts to make and finalize a permanent placement for the child
40 have been made.

1 Each licensed foster family agency shall submit reports for each
2 child in its care, custody, and control to the court concerning the
3 continuing appropriateness and extent of compliance with the
4 child's permanent plan, the extent of compliance with the case
5 plan, and the type and adequacy of services provided to the child.

6 (f) Unless their parental rights have been permanently
7 terminated, the parent or parents of the child are entitled to receive
8 notice of, and participate in, those hearings. It shall be presumed
9 that continued care is in the best interests of the child, unless the
10 parent or parents prove, by a preponderance of the evidence, that
11 further efforts at reunification are the best alternative for the child.
12 In those cases, the court may order that further reunification
13 services to return the child to a safe home environment be provided
14 to the parent or parents up to a period of six months, and family
15 maintenance services, as needed for an additional six months in
16 order to return the child to a safe home environment.

17 (g) At the review conducted by the court and held at least every
18 six months, regarding a child for whom the court has ordered
19 parental rights terminated and who has been ordered placed for
20 adoption, *or, for an Indian child for whom parental rights are not*
21 *being terminated and a tribal customary adoption is being*
22 *considered*, the county welfare department shall prepare and present
23 to the court a report describing the following:

24 (1) The child's present placement.

25 (2) The child's current physical, mental, emotional, and
26 educational status.

27 (3) If the child has not been placed with a prospective adoptive
28 parent or guardian, identification of individuals, other than the
29 child's siblings, who are important to the child and actions
30 necessary to maintain the child's relationship with those
31 individuals, provided that those relationships are in the best interest
32 of the child. The agency shall ask every child who is 10 years of
33 age or older to identify any individuals who are important to him
34 or her, consistent with the child's best interest, and may ask any
35 child who is younger than 10 years of age to provide that
36 information as appropriate. The agency shall make efforts to
37 identify other individuals who are important to the child.

38 (4) Whether the child has been placed with a prospective
39 adoptive parent or parents.

1 (5) Whether an adoptive placement agreement has been signed
2 and filed.

3 (6) If the child has not been placed with a prospective adoptive
4 parent or parents, the efforts made to identify an appropriate
5 prospective adoptive parent or legal guardian, including, but not
6 limited to, child-specific recruitment efforts and listing on an
7 adoption exchange.

8 (7) Whether the final adoption order should include provisions
9 for postadoptive sibling contact pursuant to Section 366.29.

10 (8) The progress of the search for an adoptive placement if one
11 has not been identified.

12 (9) Any impediments to the adoption or the adoptive placement.

13 (10) The anticipated date by which the child will be adopted or
14 placed in an adoptive home.

15 (11) The anticipated date by which an adoptive placement
16 agreement will be signed.

17 (12) Recommendations for court orders that will assist in the
18 placement of the child for adoption or in the finalization of the
19 adoption.

20 The court shall determine whether or not reasonable efforts to
21 make and finalize a permanent placement for the child have been
22 made.

23 The court shall make appropriate orders to protect the stability
24 of the child and to facilitate and expedite the permanent placement
25 and adoption of the child.

26 (h) At the review held pursuant to subdivision (d) for a child in
27 long-term foster care, the court shall consider all permanency
28 planning options for the child including whether the child should
29 be returned to the home of the parent, placed for adoption, *or, for*
30 *an Indian child, in consultation with the child's tribe, placed for*
31 *tribal customary adoption*, or appointed a legal guardian, or, if
32 compelling reasons exist for finding that none of the foregoing
33 options are in the best interest of the child, whether the child should
34 be placed in another planned permanent living arrangement. The
35 court shall order that a hearing be held pursuant to Section 366.26,
36 unless it determines by clear and convincing evidence that there
37 is a compelling reason for determining that a hearing held pursuant
38 to Section 366.26 is not in the best interest of the child because
39 the child is being returned to the home of the parent, the child is
40 not a proper subject for adoption, or no one is willing to accept

1 legal guardianship. If the licensed county adoption agency, or the
2 department when it is acting as an adoption agency in counties
3 that are not served by a county adoption agency, has determined
4 it is unlikely that the child will be adopted or one of the conditions
5 described in paragraph (1) of subdivision (c) of Section 366.26
6 applies, that fact shall constitute a compelling reason for purposes
7 of this subdivision. Only upon that determination may the court
8 order that the child remain in foster care, without holding a hearing
9 pursuant to Section 366.26.

10 (i) If, as authorized by subdivision (h), the court orders a hearing
11 pursuant to Section 366.26, the court shall direct the agency
12 supervising the child and the licensed county adoption agency, or
13 the State Department of Social Services when it is acting as an
14 adoption agency in counties that are not served by a county
15 adoption agency, to prepare an assessment as provided for in
16 subdivision (i) of Section 366.21 or subdivision (b) of Section
17 366.22. A hearing held pursuant to Section 366.26 shall be held
18 no later than 120 days from the date of the 12-month review at
19 which it is ordered, and at that hearing the court shall determine
20 whether adoption, *tribal customary adoption*, legal guardianship,
21 or long-term foster care is the most appropriate plan for the child.

22 (j) The implementation and operation of the amendments to
23 subdivision (e) enacted at the 2005–06 Regular Session shall be
24 subject to appropriation through the budget process and by phase,
25 as provided in Section 366.35.

26 (k) The reviews conducted pursuant to subdivision (a) or (d)
27 may be conducted earlier than every six months if the court
28 determines that an earlier review is in the best interests of the child
29 or as court rules prescribe.

30 SEC. 11. Section 16120 of the Welfare and Institutions Code
31 is amended to read:

32 16120. A child shall be eligible for Adoption Assistance
33 Program benefits if all of the conditions specified in subdivisions
34 (a) through (g), inclusive, are met or if the conditions specified in
35 subdivision (h) are met.

36 (a) The child has at least one of the following characteristics
37 that are barriers to his or her adoption:

38 (1) Adoptive placement without financial assistance is unlikely
39 because of membership in a sibling group that should remain intact
40 or by virtue of race, ethnicity, color, language, age of three years

1 or older, or parental background of a medical or behavioral nature
2 that can be determined to adversely affect the development of the
3 child.

4 (2) Adoptive placement without financial assistance is unlikely
5 because the child has a mental, physical, emotional, or medical
6 disability that has been certified by a licensed professional
7 competent to make an assessment and operating within the scope
8 of his or her profession. This paragraph shall also apply to children
9 with a developmental disability as defined in subdivision (a) of
10 Section 4512, including those determined to require out-of-home
11 nonmedical care as described in Section 11464.

12 (b) The need for adoption subsidy is evidenced by an
13 unsuccessful search for an adoptive home to take the child without
14 financial assistance, as documented in the case file of the
15 prospective adoptive child. The requirement for this search shall
16 be waived when it would be against the best interest of the child
17 because of the existence of significant emotional ties with
18 prospective adoptive parents while in the care of these persons as
19 a foster child.

20 (c) The child meets either of the following criteria:

21 (1) At the time a petition for an agency adoption, as defined in
22 Section 8506 of the Family Code, or an independent adoption, as
23 defined in Section 8524 of the Family Code, is filed, the child has
24 met the requirements to receive federal supplemental security
25 income benefits pursuant to Subchapter 16 (commencing with
26 Section 1381) of Chapter 7 of Title 42 of the United States Code,
27 as determined and documented by the federal Social Security
28 Administration.

29 (2) The child is the subject of an agency adoption as defined in
30 Section 8506 of the Family Code and was any of the following:

31 (A) Under the supervision of a county welfare department as
32 the subject of a legal guardianship or juvenile court dependency.

33 (B) Relinquished for adoption to a licensed California private
34 or public adoption agency, or the department, and would have
35 otherwise been at risk of dependency as certified by the responsible
36 public child welfare agency.

37 (C) Committed to the care of the department pursuant to Section
38 8805 or 8918 of the Family Code.

1 (3) *The child is an Indian child and the subject of an order of*
2 *adoption based on tribal customary adoption of an Indian child,*
3 *as described in Section 366.24.*

4 (d) The child is under 18 years of age, or under 21 years of age
5 and has a mental or physical handicap that warrants the
6 continuation of assistance.

7 (e) The adoptive family is responsible for the child pursuant to
8 the terms of an adoptive placement agreement or a final decree of
9 adoption and has signed an adoption assistance agreement.

10 (f) The adoptive family is legally responsible for the support of
11 the child and the child is receiving support from the adoptive
12 parent.

13 (g) The department or the county responsible for determining
14 the child's Adoption Assistance Program eligibility status and for
15 providing financial aid, and the prospective adoptive parent, prior
16 to or at the time the adoption decree is issued by the court, have
17 signed an adoption assistance agreement that stipulates the need
18 for, and the amount of, Adoption Assistance Program benefits.

19 (h) A child shall be eligible for Adoption Assistance Program
20 benefits if the child received Adoption Assistance Program benefits
21 with respect to a prior adoption and the child is again available for
22 adoption because the prior adoption was dissolved and the parental
23 rights of the adoptive parents were terminated or because the
24 child's adoptive parents died.

25 SEC. 12. Section 16508 of the Welfare and Institutions Code
26 is amended to read:

27 16508. Permanent placement services shall be provided or
28 arranged for by county welfare department staff for children who
29 cannot safely live with their parents and are not likely to return to
30 their own homes. Permanent placement services shall be available
31 without regard to income to the following children:

32 (a) Children judged dependent under Section 300 where a review
33 has determined that reunification, adoption, *tribal customary*
34 *adoption*, or guardianship is inappropriate.

35 (b) Recipients of public assistance under nonfederally funded
36 Aid to Families with Dependent Children programs who are wards
37 of a legal guardian where a review has determined that reunification
38 or adoption is inappropriate.

39 SEC. 13. Section 16508.1 of the Welfare and Institutions Code
40 is amended to read:

1 16508.1. (a) For every child who is in foster care, or who
2 enters foster care, on or after January 1, 1999, and has been in
3 foster care for 15 of the most recent 22 months, the social worker
4 shall submit to the court a recommendation that the court set a
5 hearing pursuant to Section 366.26 for the purpose of terminating
6 parental rights. The social worker shall concurrently initiate and
7 describe a plan to identify, recruit, process and approve a qualified
8 family for adoption of the child.

9 (b) The social worker is not required to submit the
10 recommendation as described in subdivision (a) if any of the
11 following applies:

12 (1) The case plan for the child has documented a compelling
13 reason or reasons why it is unlikely that the child will be adopted,
14 as determined by the department when it is acting as an adoption
15 agency or by the licensed adoption agency, and therefore
16 termination of parental rights would not be in the best interest of
17 the child or that one of the conditions set forth in paragraph (1) of
18 subdivision (c) of Section 366.26 applies.

19 (2) A hearing under Section 366.26 is already set.

20 (3) The court has found at the previous hearing under Section
21 366.21 that there is a substantial probability that the child will be
22 returned to the child's home within the extended period of time
23 permitted.

24 (4) The court has found at the previous hearing under Section
25 366.21 that reasonable reunification services have not been offered
26 or provided.

27 (5) The court has found at each and every hearing at which the
28 court was required to consider reasonable efforts or services that
29 reasonable efforts were not made or that reasonable services were
30 not offered or provided.

31 (6) The incarceration or institutionalization of the parent or
32 parents, or the court-ordered participation of the parent or parents
33 in a residential substance abuse treatment program, constitutes a
34 significant factor in the child's placement in foster care for a period
35 of 15 of the most recent 22 months, and termination of parental
36 rights is not in the child's best interests, considering factors such
37 as the age of the child, the degree of parent and child bonding, the
38 length of the sentence, and the nature of the treatment and the
39 nature of the crime or illness.

40 (7) *Tribal customary adoption is recommended.*

1 (c) A recommendation to the court pursuant to subdivision (a)
2 shall not be made if the social worker documents in the case record
3 a compelling reason why a hearing pursuant to Section 366.26 is
4 not in the best interest of the child, or that reasonable efforts to
5 safely return the child home are continuing consistent with the
6 time period provided for in paragraph (1) of subdivision (g) of
7 Section 366.21.

8 (d) Beginning January 1, 1999, the county welfare department
9 shall implement a procedure for reviewing the application of this
10 section to the case plans of all children who have been in foster
11 care for 15 out of the most recent 22 months. The review shall
12 proceed within the following timeframes:

13 (1) By July 1, 1999, one-third of the children shall have been
14 reviewed, giving priority to children who have been in foster care
15 the greatest length of time.

16 (2) By January 1, 2000, at least two-thirds of the children shall
17 have been reviewed.

18 (3) By July 1, 2000, all children shall have been reviewed.

19 (e) For purposes of this section, a child shall be considered to
20 have entered foster care on the earlier of the date of the
21 jurisdictional hearing held pursuant to Section 356 or the date that
22 is 60 days after the date on which the child was initially removed
23 from the home of his or her parent or guardian.

24 SEC. 14. (a) Sections 1 to 13, inclusive, of this act shall
25 become operative on July 1, 2010.

26 (b) The Judicial Council shall adopt rules of court and necessary
27 forms required to implement tribal customary adoption as a
28 permanent plan for dependent Indian children before July 1, 2010.

29 SEC. 15. If the Commission on State Mandates determines
30 that this act contains costs mandated by the state, reimbursement
31 to local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.